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Presidential Documents

Title 3—

The President

Proclamation 5461 of April 17, 1986

National Mathematics Awareness Week, 1986

By the President of the United States of America

A Proclamation

Since the time of its beginnings in Egypt and Mesopotamia some 5,000 years ago, progress in mathematical understanding has been a key ingredient of progress in science, commerce, and the arts. We have made astounding strides since from the theorems of Pythagoras to the set theory of Georg Cantor. In the era of the computer, more than ever before, mathematical knowledge and reasoning are essential to our increasingly technological world.

Despite the increasing importance of mathematics to the progress of our economy and society, enrollment in mathematics programs has been declining at all levels of the American educational system. Yet the application of mathematics is indispensable in such diverse fields as medicine, computer sciences, space exploration, the skilled trades, business, defense, and government. To help encourage the study and utilization of mathematics, it is appropriate that all Americans be reminded of the importance of this basic branch of science to our daily lives.

The Congress, by Senate Joint Resolution 261, has designated the week of April 14 through April 20, 1986, as "National Mathematics Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of April 14 through April 20, 1986, as National Mathematics Awareness Week, and I urge all Americans to participate in appropriate ceremonies and activities that demonstrate the importance of mathematics and mathematical education to the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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Rules and Regulations

Federal Register
Vol. 51, No. 76
Monday, April 21, 1986

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1809, 1903, 1910, 1924, 1941, 1943, 1944, 1945, 1951, 1955, 1962 and 1965

Implementation of Additional Provisions of the Food Security Act of 1985, Emergency Loans, Farm Operating Loans, etc.

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to: (1) Provide for insured loans to joint operations, (2) provide for the use of proceeds from income from mineral rights for loan payments and require mineral rights be appraised when taken for security, (3) provide for record keeping training for farm borrowers with emphasis on limited resource borrowers, (4) provide assurance that a portion of loan funds be made available for discretionary use by the borrower and release of proceeds of normal income security for family living and farm operating expenses, (5) provide for restricting Emergency (EM) loans to family farms and restrict the making of EM loans when Federal Crop Insurance is available, (6) provide for timely approval and closing of farmer program loans, (7) provide for loans to entities of larger than family farms provided each individual interest does not exceed a family farm and all the members are related blood or marriage. Provide for specific requirements for its handling and leasing of inventory farm property. These amendments are necessary to implement the applicable provisions of the "Food Security Act of 1985" (Pub. L. 99-198). The major effects will be to ensure that the agency provides prompt service to applicants and borrowers, reduce the need and size of the emergency loan program, assist borrowers with their family living and farm operating expenses, expand the size of operation an entity may have when the members are related by blood or marriage.

DATE: Interim rule effective April 21, 1986. Comments must be submitted on or before May 21, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: William Krause, Director, Emergency Loan Division, Farmers Home Administration, USDA, Room 5420, Washington, DC 20250, Telephone: (202) 382-1632.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or 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.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, Farm Ownership Loans and Low Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

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

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." 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.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The "Food Security Act of 1985" (Pub. L. 99-198) amended FmHA's statutory loan making authorities, and these amendments must be implemented as soon as possible to provide immediate assistance to financially stressed farmers. Field offices are already receiving requests for those provisions that were effective upon enactment of the law. The Agency must provide immediate guidance by revising the regulations. It is urgent that these regulations become effective on publication so that Farmers can plan for spring planting. It is necessary to implement these regulations for those farmers that have suffered severe losses due to bad weather and other natural disasters. The Act requires changes in the emergency loan regulations related to the size of the farming operation. Certain applications for these loans are being held in abeyance until the regulations are issued. Any delay could make these farmers late with their spring planting. Other farmers have lost or are losing their farms and need the new regulations immediately to be able to lease back their farms for this year's season. Immediate implementation of these regulations will enhance existing regulations in assisting farmers to continue farming and assist in protecting the nation's food supply. It is the government's social responsibility to provide immediate assistance to farmers as provided in the Act. Other changes in the regulations are administrative management changes and some changes are due to court-imposed requirements. The court-imposed requirements must be implemented immediately to avoid being in contempt of the court order.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule action are impractical, and good cause is found for making this interim rule effective less than 30 days after publication in the **Federal Register.**

Background

The loan making, supervision, and servicing of FmHA farm borrowers is governed mainly by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). The major purpose for revising the FmHA regulations at this time is to implement various sections of the Food Security Act of 1985 (Pub. L. 99-198) as it applies to certain farmer program loans. The sections are as follows:

Section 1301—Joint operations.
Section 1303—Family Farm Restriction (Blood and Marriage).
Section 1305—Mineral rights as collateral.
Section 1306—Farm Recordkeeping Training for borrowers.
Section 1307—Non-supervised Accounts.
Section 1308—Eligibility for EM loans.
Section 1310—Oil and Gas Royalties.
Section 1312—Prompt Approval of loans.
Section 1314—Disposition and leasing of farm land.
Section 1315—Release of Normal Income Security.
Section 1325—Prohibiting Coordinated Financial Statement.

Due to the urgent need of the farmers for credit for spring planting, FmHA has expedited the implementation of these changes.

Background—Recreation Loans

This is a minor program. Since 1969 only 460 insured loans and three guaranteed loans for a total of $20,527,880 were made. As of October 21, 1985, on 210 loans for a total of $13,325,000 remain outstanding. The program has not been funded since Fiscal Year 1981. Indications are that it will not receive funding in the foreseeable future. Therefore, the Agency is not amending the recreation loan regulations due to the expense.

Highlights

The Farmers Home Administration amends its farmer program insured loan making and servicing regulations to implement changes required by the "Food Security Act of 1985" and where applicable certain other program regulations to update certain references and forms, to correct certain inconsistencies, to delete obsolete material, and to clarify the wording in a few paragraphs in various regulations. Such changes are mainly for administrative purposes and are published at this time for convenience. The major changes are as follows:

1. Amend FmHA farmer program insured loan making and servicing regulations to provide for loans to joint operations as required by section 1301 of Pub. L. 99-198. The changes provide for an FmHA definition of a joint operation and deal with applicants/borrowers that farm as joint operations the same as other types of farming entities such as partnerships, corporations and cooperatives.

2. Amend FmHA farmer program insured loan making and servicing regulations to provide for loans to farm entities that are larger than a family farm when all of the members are related by blood or marriage, all the members operate the farm, and none of the individual member's interest exceed that of a family farm. The change also provides for an FmHA definition of related by blood or marriage. This change is required by section 1303 of Pub. L. 99-198.

3. Amend FmHA farmer program insured loan making, servicing and farm appraisal regulations to require that mineral rights must be included in the appraisal when mineral rights are taken for FmHA security for loans. The change also provides that regular payments may be made on FmHA loans from the proceeds from oil and gas royalties. These changes are required by sections 1305 and 1310 of Pub. L. 99-198. It is also necessary to amend the farm appraisal regulations to add a provision for a method for determining the value of mineral rights. The amendment will allow the FmHA State Director to contract for appraisals and appraisal training in accordance with the agency's contracting regulations. Several references and other changes are made to clarify and conform to other regulations which includes updating material for the Code of Federal Regulations.

4. Amend FmHA operating loan regulations to add a provision for providing loan funds to borrowers for farm recordkeeping training with emphasis on this training for limited resource loan borrowers. This provision is required by section 1306 of Pub. L. 99-198.

5. Amend FmHA farmer program insured loan making regulations to allow $5,000 or 10 percent of the loan whichever is less, to be released to the borrower for use at the borrower's discretion for purposes agreed upon in the farm operating plan. This change is required by section 1307 of Pub. L. 99-198.

6. Amend FmHA farmer program insured servicing regulations to require the release of FmHA chattel security for essential family living and/or farm operating expenses. A feasible plan of operation is not necessary for such releases if the only reason for developing the plan is for the use in determining the need for the release. This is provided for in section 1315 of Pub. L. 99-198.

7. Amend FmHA farmer program insured loan making regulations to require prompt approval of loans. Completed applications must be approved or disapproved within 60 days as required by section 1312 of Pub. L. 99-198.

8. Amend FmHA emergency (EM) loan insured regulations to repeal the authority to make EM loans to applicants for larger than family farm operations, repeal the authority to make EM annual production loans, repeal the authority to make EM loans to applicants able to obtain credit elsewhere, prohibit EM loans to applicants when Federal crop insurance is available, and to restrict the availability of EM Subtitle A funds to owner-operators. These changes are provided for in section 1308 of Pub. L. 99-198.

9. Amend FmHA insured servicing regulation to:

(1) Provide for assistance with the Agriculture Stabilization and Conservation Service (ASCS) for maintaining allotments, marketing quotas or acreage bases assigned to inventory property; (2) provide that the

State Director consider subdividing surplus inventory property into family farms for resale to eligible applicants, (3) provide that the Soil Conservation Service (SCS) be requested to identify highly erodible land on inventory property and SCS recommend specific conservation practices for such land, and such practices be made a requirement of the lease or sale; (4) provide for the opportunity to small business to bid for management contracts for inventory property; (5) provide for leasing back and purchase to previous owner of farm inventory property at the capitalization value of the property and provide that the approval of a sale must not have a detrimental effect on the value of farms in the area; (6) provide for requirements for public notice of the availability of inventory property for lease; (7) provide the requirements for the County Committee to certify the eligibility of applicants for a credit sale of inventory property and select the applicant for the sale if more than one applicant is eligible; (8) provide for the authority to grant or sell easements, or the equivalent for conservation purposes and the authority to sell development rights for their market value; (9) remove references to the "Coordinated Financial Statement." These changes are provided for in section 1314 and section 1325 of Pub. L. 99-198.

10. In addition to the above amendments FmHA is amending the EM regulations as follows:

Several revisions to Subpart D of Part 1945 are not required by the Food Security Act of 1985 but are necessary to delete provisions no longer authorized by law, to provide continuity with other FmHA loan program regulations and to clarify provisions identified as misleading or inconsistent by FmHA Coordinated Assessment Reviews or Office of Inspector General (OIG) audits. This action is therefore necessary to strengthen FmHA's internal controls to minimize losses to the Government and to eliminate confusion regarding the types of FmHA emergency loans available.

It is urgent that FmHA have current regulations in place prior to the spring planting season to assist those farmers affected by late fall and winter disasters. The following sections of Subpart D of Part 1945 contain revisions or deletions in addition to those required by the Food Security Act of 1985.

Section 1945.154—Contains changes and clarifications to several definitions.

Section 1945.161—Deletes references to EM major adjustment loans. The authority to make these loans was repealed by Pub. L. 96-438. Minor clarifications are also included.

Section 1945.162—Deletes obsolete references to application deadlines for major adjustment and annual production loans that are no longer authorized by law.

Section 1945.163—Contains several clarifications regarding the calculation of losses. These changes are necessary as a result of OIG audit findings and FmHA field reviews, and changes in the law regarding Agricultural Stabilization and Conservation Service (ASCS) established yield definitions.

Section 1945.166—Contains several clarifications on the use of EM loan funds and also deletes references to EM major ajustment loans.

Section 1945.168—Contains clarifications on the rates and terms for EM loans. OIG audits have cited cases where loans were scheduled for longer periods of time than necessary and these changes are necessary to address those findings.

Section 1945.169—The security requirements for FmHA loans have been partially revised to remove obsolete references and to clarify provisions that were poorly worded and subject to different interpretations by the field offices. Changes are needed to clarify this section and to protect the interest of the Government.

Section 1945.175—Is revised to provide additional guidance for FmHA appraisal methods for EM loans. Guidelines for FmHA EM chattel appraisals have been temporarily implemented through the use of Agency Administrative Notices (AN), and it is necessary to incorporate these guidelines into the regulations.

Section 1945.183—Provides guidelines for avoiding duplication of benefits with the Small Business Administration (SBA). These changes are necessary due to previous amendments to the Small Business Act.

11. Additional changes in the regulations for Subpart B of Part 1924 and Subpart A of Part 1962 of this chapter are included for compliance with the court order filed March 3, 1986 in the United States District Court of North Dakota. These changes provide for giving the borrower the opportunity to appeal when the borrower and County Supervisor disagree on the release of sale proceeds from FmHA chattel security and to clarify the requirements for such releases.

List of Subjects

7 CFR Part 1809

Loan programs—Agriculture, Real property—Appraisals, Rural areas.

7 CFR Part 1903

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture.

7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Home improvement, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1951

Accounting servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

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

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

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

PART 1809—APPRAISALS

1. The authority citation for Part 1809 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Appraisal of Farm and Leasehold Interests

2. Section 1809.1 is amended by revising the introductory paragraph and by revising paragraphs (b) and (c) to read as follows:

§ 1809.1 General.

This subpart prescribes the policies and procedures for appraisal of farms securing Farm Ownership (FO) loans, Operating (OL) loans, Soil and Water (SW) loans to individuals, Recreation (RL) loans, Land Conservation and Development (LCD) loans, Labor Housing (LH), And Rural Housing (RH) loans other than nonfarm tracts or small farms. All farms, except small farms appraised for RH loans, will be appraised for their market value under this subpart.

* * * * *

(b) *Appraisal reports.* Form FmHA 422-1, "Appraisal Report (Farm Tract)," Form FmHA 422-3, "Map of Property," and Form FmHA 1922-11, "Appraisal for Mineral Rights," will be used in recording appraisals except as modified by Subpart A of Part 1941, Subparts, A, B, and C of Part 1943 and Subpart D of Part 1945 for loans of $10,000 or less. The forms will be prepared in accordance with Exhibits A, B and G of this subpart (available in any FmHA office). When applicable, Form FHA 422-2, "Supplement Report (Irrigation, Drainage, Levee, and Minerals)," will be prepared in conjunction with an appraisal. In no case will Form FmHA 1922-8, "Residential Appraisal Report," be used to appraise a farm under this subpart.

(c) *Administrative responsibility.* The State Director will authorize qualified county employees to make appraisals under this subpart. Employees must be given intensive appraisal training to establish an acceptable level of competence before they are granted authorization to make appraisals. Job descriptions for these employees will include appraisal duties. Exceptions to this policy must have prior approval of the Administrator. The State Director will designate qualified members of the State Office staff only to provide appraisal training. State Directors are authorized to contract for appraisals and appraisal training in the manner prescribed by FmHA Instruction 2024-A (available in any FmHA office).

* * * * *

3. Section 1809.2 is revised to read as follows:

§ 1809.2 Definitions of values.

There are different kinds of values used in farm appraisals which may be considered in arriving at the Recommended Market Value for farm properties.

(a) *Agricultural value.* The agricultural value of a farm is the amount a typical purchaser would, under usual conditions, be willing to pay and be justified in paying for the farm, as improved, for customary agricultural uses, including farm-home advantages, with the expectation of receiving typical net earnings from the farm. This value is based upon agricultural assets only and assumes an informed typical purchaser.

(1) The amount the purchaser would be justified in paying for a farm for farming purposes depends in a large measure on the earning ability of the farm. In determining the ability of a farm, the appraiser will assume that:

(i) The farm will be operated by a typical operator for the area.

(ii) The cropping system used is typical for the farm under consideration and will maintain the anticipated productivity. In determining the proper cropping system, the appraiser will take into account acreage allotments for the basic crops.

(iii) Crop yields used for the farm under consideration are representative of yields generally being obtained in the area.

(iv) Approved commodity prices and farm expenses are employed in estimating net income.

(v) The property will be improved as shown in Form FHA 424-1, "Development Plan."

(vi) The share of farm operating expenses, the cost of necessary farm repairs and replacements customarily paid by the landowner will be deducted from the landowner's share of income in determining net rental farm income.

(2) The appraiser will also consider the value of the farm as a home and will take this into account along with the amount that could safely be invested in the farm, based on the capitalization of the net rental farm income in arriving at its agricultural value.

(b) *Market value.* The market value is the amount a typical purchaser would be willing to pay and justified in paying for the property considering agricultural uses and nonagricultural assets the property may have. It is assumed that the property would sell for this amount with a reasonable sales effort and that the purchaser would be a willing but not anxious buyer, and the seller would be a willing but not forced seller. A market value determination will be made for the acquisition of individual tracts of security servicing for the following:

(1) Security servicing actions required by Subpart A of Part 1965 of this chapter.

(2) Rural Renewal Loans.

(3) Emergency Loans.

(4) Resource Conservation and Development Loans.

(5) Community Services Loans and Grants.

(6) Cooperative Association Loans.

(7) Timber Development Loans. (Appalachian Region only.)

4. Section 1809.3 is amended by revising paragraphs (b)(1)(i), (b)(1)(vi), and (c) to read as follows:

§1809.3 Basic farm valuation principles.

* * * * *

* * *

(1) * * *

(i) The distance to market and trading centers in which applicant will conduct business.

* * * * *

(vi) Location value is difficult to measure on the basis of a formula. It can be established by analysis of sales data. When location causes the property to have more value than justified on the basis of customary agricultural use, the appraiser should determine and include an estimate of what the better features will be worth to a typical buyer.

* * * * *

(c) *Home desirability.* This is an important factor in farm appraisals since the farm business provides an operator with an occupation and a home. An appraiser should consider those features which relate to family living and the satisfaction of a comfortable home. An appraiser's opinion should be based on the various home features of a farm and how they will appeal to a typical purchaser. Home use advantages have a bearing on the kind of typical buyer or operator attracted to the farm under consideration. This will affect the quality of management which will be assumed by the appraiser. The basic elements considered for home use value are the house and yard, location, all weather accessibility, water and other utilities, neighborhood, churches, schools, and recreational and scenic features. Properties with antiquated, poorly arranged and obsolete buildings will have less than improved properties.

* * * * *

5. Section 1809.4 is amended by revising the title, the introductory paragraph, by revising the introductory paragraph (a), by revising paragraph (b)(1)(i), by revising the introductory paragraph (c), and paragraphs (c)(1), (d), and (e) to read as follows:

§ 1809.4 The three-way approach to market value.

Farm appraisals made under this subpart will be based to the extent applicable on a three-way approach, using market data of prices of comparable properties, capitalization, and summation of all resources and facilities. This combination will provide a means of arriving at a market value for the full range of farm properties, which the Farmers Home Administration (FmHA) is now authorized to finance.

(a) *Market data approach.* Using sale prices of comparable properties sold during the most recent period is a sound and acceptable means of arriving at market value. The appraiser should observe, study, and record pertinent facts for as many sales of comparable property as possible. He should be certain the properties selected as comparable are so similar to the property being appraised that a prospective purchaser would likely pay an equivalent price for the farm. The objective is to deduce from sale data on comparable property the price which the property being appraised would attract on the market. If there is a lack of similarity between the property being appraised and the properties on which sales data is being used, appropriate compensating adjustments will have to be made. If the differences are numerous or pronounced, sales data on more nearly comparable property should include those in which the terms and conditions of the sale are representative of true sale transactions occurring in the community. Form FHA 422–9, "Real Estate Sales Data," will be used to record sales information.

* * * * *

(b) * * *

(1) * * *

(i) Determine the rate of return received on comparable or nearly comparable properties or investments. When the sale price of a comparable farm has been determined and confirmed, the rate of return can be established by working an earnings statement for that farm. The net income thereby obtained will reflect the rate of return to the investment in the farm. If the exact annual income can be ascertained from the owner, a more precise capitalization rate can be determined. Several determinations in this manner can provide a good indication of a reliable capitalization rate for an area. Exhibit F is an example of a technique for determining the capitalization rate for an area. The capitalization rate will be determined annually.

* * * * *

(c) *Summation approach.* An indication of value under this approach is obtained by adding the value of essential buildings to the market value of the land. Depreciation must recognize functional and economic obsolescence as well as physical deterioration in determining building value. This approach is used for checking purposes in making the appraisal.

(1) The market value of land will be the value of the land without buildings. It will include land development of a permanent nature. A value per acre for the land resources will be determined by analyzing the sale prices of comparable land.

* * * * *

(d) *Market value.* The appraiser will consider the results of these three approaches and make needed adjustments to these findings before reaching the final conclusion for the Recommended Market Value. The adjustments will usually be for unusual location and economic use features not otherwise recognized, and for home use features which contribute to family living satisfaction not previously reflected. After an indication of value reflected by each approach has been determined, the appraiser should re-examine the calculations and the adequacy of the data analyzed in each approach. The appraiser should give further consideration to the strong points and the weakness of each approach used. As a general rule the value indicated by the market data approach is the most reliable indicator of value. The final step is the correlation of the indications of value reflected by the three approaches. The appraiser will examine the spread between the minimum and maximum figures. The appraiser will determine which approach appears to be the most reliable answer to the appraisal problem. The appraiser will temper this determination of value by the degree of reliance to be placed on the other indication of value.

(e) *Recommended market value.* The appraiser's conclusion using the three approaches is the Recommended Market Value recorded in Part 7 of Form FmHA 422–1. The appraised value for mineral rights from Part VI of Form FmHA 1922–11, "Appraisal of Mineral Rights," will be added to Part 7 of Form FmHA 422–1 to arrive at the Recommended Market Value.

6. Section 1809.8 is revised to read as follows:

§ 1809.8 Preparation of Appraisal Report.

Directions for completing Form FmHA 422–1 are given on the attached Exhibits A and G (available in any FmHA office).

PART 1900—GENERAL

7. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmers Home Administration Appeal Procedure

8. Section 1900.55 is amended by revising paragraph (d) to read as follows:

§ 1900.55 FmHA actions to limit the need for appeals.

* * * * *

(d) Farmer program loan borrowers who are sent Form FmHA 1924–25 and who complete Part I, II A, II B, II C, or II D of Form FmHA 1924–26 are entitled to a conference with the decision maker before the appeals process begins. The conference cannot be waived by FmHA. If the borrower or the borrower's representative fails to schedule or attend the conference or if the borrower fails to bring the information requested, the borrower is still entitled to a hearing. If the borrower or the borrower's representative attends the conference but their request for servicing relief cannot be granted, Exhibit B–3 with attachment B–4 will be used to notify the borrower of their appeal rights. If the borrower or borrower's representative fails to attend the conference Exhibit B–2 with attachment B–4 will be used.

* * * * *

9. Section 1900.56 is amended by revising paragraph (a) to read as follows:

§ 1900.56 Appeal from an initial FmHA decision.

(a) Farmer program loan borrowers who are sent Forms FmHA 1924–25 and FmHA 1924–26 (in accordance with Subpart A of Part 1965, Subpart B of Part 1924, Subpart A of Part 1962, or Subpart C of Part 1950 of this chapter) are given an opportunity to appeal before the adverse action is taken unless Part II E or Part III or IV of Form FmHA 1924–26 was completed. If the borrower requested servicing relief and such relief cannot be granted, the borrower will be sent Exhibit B–3 with attachment Exhibit B–4. If an appeal is taken and the decision to take adverse action is upheld, the final letter upholding the initial decision will contain the following statement:

This review concludes the administrative appeal of your case. FmHA will proceed to take the adverse action noted on Form FmHA 1924–25, "Notice of Intent to Take Adverse

Action." You are not entitled to any further appeal in connection with the adverse action.

* * * * *

10. Exhibit B-3 to Subpart B of Part 1900 is revised to read as follows:

Exhibit B-3 to Subpart B—Letter for Notifying Applicants and Borrowers of Unfavorable Decision Reached at the Pre-Hearing Meeting or Conference

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert address)

Date: ______

Dear______: ______

We appreciated the opportunity to review the facts relative to [your application/request for FmHA services] [the assistance you are presently receiving]. We regret that our [meeting] [conference] with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights.

The hearing officer will be (name and title) ______. A request for a hearing should be sent to the hearing officer in care of this office (address) ______.

(The following paragraph for individual applicants only):

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)______

(County Supervisor for County Committee)

Title: ______

PART 1903—VOLUNTARY DEBT ADJUSTMENT

11. The authority citation for Part 1903 is revised to read as follows:

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

Subpart A—Voluntary Debt Adjustment

12. Section 1903.1 is revised to read follows:

§ 1903.1 General.

This subpart prescribes the policies, responsibilities, and procedures in the voluntary adjustment of debts of applicants for loans from the Farmers Home Administration (FmHA), borrowers, and other farmers, ranchers, farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms, who request such services.

PART 1910—GENERAL

13. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

14. Section 1910.1 is amended by revising the introductory paragraph to read as follows:

§ 1910.1 General.

This subpart prescribes the policies and procedures for receiving and processing Section 502 and 504 Rural Housing (RH), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Operating (OL), Emergency (EM), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS) and Labor Housing (LH) loan and grant applications except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmer Home Administration (FmHA).

* * * * *

15. Section 1910.3 is amended by revising paragraph (e) and the introductory paragraph (j) to read as follows:

§ 1910.3 Receiving applications.

* * * * *

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. Signature requirements on the Mortgage or Deed of Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA State Supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State Supplement.

* * * * *

(j) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 family residential units, or FO loans involving tracts of 25 acres or less, whether made to an individual, corporation, partnership, joint operation, cooperative, association, or other entity, the booklet entitled "Settlement Costs" will be hand-delivered to the applicant when the completed application is received, or mailed to the applicant within three (3) business days after receipt of the application in the County Office.

* * * * *

16. Section 1910.4 is revised to read as follows:

§ 1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA. In the processing of applications for Farm Ownership, Farm Operating and Soil and Water loans received from family size operators, the County Supervisor may recommend the applicant for the additional services of the "New Full-Time Family Farmer and Rancher Development Committee." See Exhibit A of Subpart B of Part 1924 of this chapter for the policies governing those additional services. If a farm is situated in more than one State, County or parish, the loan will be processed in the State, County or parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

(a) *Incomplete applications.* Applicants who submit incomplete applications for EM, FO, OL, and SW loans will be sent a letter within 20 working days after receipt of their applications. The letter will state clearly the additional information needed, and that the application cannot be processed until all required information is received in the FmHA County Office.

(b) *Completed applications.* Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except as modified by veteran's preference policies. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

(1) County Office records.

(2) Form FmHA 410-4.

(3) Credit reports as provided in Subparts B and C of Part 1910 of this chapter. (Subpart C available in any FmHA office.)

(4) Personal contacts.

(5) Visits of supervisory personnel to the applicant's residence or business.

(6) Form FmHA 410-8, "Applicant Reference Letter," to inform sources such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the related application, Form FmHA 410-1 or Form FmHA 410-4, as appropriate.

(i) Form FmHA 410-8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of P.L. 95-630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual, a joint operation or a partnership of 5 or fewer members. When not using Form FmHA 410-8, the notification will read as follows:

I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978," Public Law 95-630 in seeking financial information regarding (applicant) .

Date

County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of General Counsel (OGC).

(7) Form FmHA 1910-5, "Request for Verification of Employment." This form may be used to verify employment and income.

(c) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after a completed application for OL, FO, SW, or EM assistance is received, and prior to County Committee action, the County Supervisor will send a letter similar to FmHA Guide Letter No. 1924-B-1 to the applicant telling the applicant about Limited Resource loans.

(d) *Determining eligibility.* The County Committee will be used to determine eligibility of RH applicants who are also applying for a Farmer Program loan, or who are already indebted for a Farmer Program loan. The County Supervisor will determine eligibility for all other RH applicants. All farmer program applications are to be submitted to the County Committee for eligibility. The County Supervisor must obtain and present to the County Committee sufficient information concerning an applicant for the Committee to determine eligibility for the type of assistance requested.

(e) *County Committee actions.* All actions by the Committee regarding applicant eligibility will be taken in Committee meetings attended by at least two Committee members. If the County Committee is unable to reach a decision based on the information available, they may request the County Supervisor to obtain further information or may request a personal interview with the applicant. The County Committee will act on the application after considering all pertinent information. This action will be taken in the absence of the applicant. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(f) *Timeliness.* Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a completed application; and for farmer program loan applications, each application must be approved or disapproved and the applicant notified, in writing, of the action taken, not later 60 days after receipt of a completed application. If an application is disapproved, the applicant will be given appeal rights for any decision that is appealable under Subpart B of Part 1900 of this chapter. If a determination of eligibility cannot be made within 30 days from the date of receipt of the completed application, the applicant will be notified, in writing, of the circumstances causing the delay, and the approximate time needed to make a decision. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

(g) *Recording action taken.* The County Committee minutes or the running case record (whichever is appropriate) will show what action was taken on each application. The specific reason for unfavorable decisions of eligibility on application will be shown on the Committee Certifications. In those cases not involving County Committee action, this information will be recorded in the running case record.

(h) *Active applications.* An applicant may voluntarily withdraw an application at any time. When an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a notice within 30 days that further consideration is desired. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart. Applications for FO, SW, OL, RL, RH, RRH, RCH, RHS, and LH loans received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed. However, an expiring application for which a loan has been approved, but not closed, will be considered active until the loan is closed or canceled. All withdrawn or rejected applications will be retained in an inactive file for 25 months after the date of withdrawal or notice of adverse action. If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

17. Section 1910.5 is amended by revising paragraph (c)(1) and by adding paragraph (c)(5) to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(c) * * *

(1) Foreclosures, judgments, or delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred.

* * * * *

(5) Bankruptcies must never be used as an indication of unacceptable credit history. However, nonpayment of a debt may be used as an indication of unacceptable credit history, in accordance with § 1910.5(c)(1) of this section.

18. Section 1910.6 is amended by adding the introductory paragraph, adding paragraph (b)(3), redesignating paragraphs (c) through (e) to paragraphs (d) through (f), adding a new paragraph (c) and revising newly redesignated paragraph (d) to read as follows:

§ 1910.6 Notification of applicant.

The time frames established in § 1910.4(f) of this subpart must be met.

* * * * *

(b) * * *

(3) If a decision to deny an EM, OL, FO or SW loan(s) is overturned or modified in the appeal process or by a court, the case will be returned to the local FmHA County Supervisor for further processing. The County Supervisor or the County Committee must take action within 15 days, as set out in § 1910.59(c) of Subpart B of Part 1900 of this chapter.

(c) *Available funds.* After EM, OL, FO and SW loans are approved, loan funds will be made available to the applicants within the time frames established in the loan making regulations.

(d) *Lack of funds.* Applications received when funds are not available will be processed and a decision on eligibility will be made. Applicants who are ineligible will be so advised, in accordance with § 1910.6(b)(1) of this subpart. If no funds are available within 15 days of loan approval, eligible applicants will be notified that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will be notified immediately by letter. Funds must be provided to the applicant within 15 days of they when become available, unless the applicant agrees to a longer period. The letter should tell the applicant to notify the County Office immediately if the applicant is still interested in obtaining the assistance originally applied for. If the applicant does not respond within 10 days of the date of the first letter, a second notice will be sent requesting the applicant to contact the County Office within 15 days or the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in § 1910.6(b)(1) of this subpart. If the applicant indicates a desire to obtain assistance, the County Supervisor will review the application with the applicant and, if there have been any significant changes that would affect eligibility, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration. If, after reconsideration, the application is rejected, adverse action has occurred, and the proper notification will be sent as outlined in § 1910.6(b)(1) of this subpart.

* * * * *

§ 1910.7 [Amended]

19. Section 1910.7(a) is amended by removing from the first sentence the words "Household Financial Statement and Budget" and inserting a period after the phrase "Form FmHA 431-3."

Subpart B—Credit Reports (Individuals)

20. Section 1910.52 is amended by revising paragraph (b) to read as follows:

§ 1910.52 General.

* * * * *

(b) Whenever Exhibit A does not list a contractor for a particular town or area, the local FmHA official should request, through the State Director, the address of other contractors from the Director, Directives and Administrative Services Division, National Office. If the Director, Directives and Administrative Services Division, informs the State Director that there are no other contractors for that particular area, the local FmHA official should follow the procedures outlined in Exhibit A, Credit Report Contracts, (a). In the meantime, § 1910.4(b) (1), (2), (4), (5), (6) and (7) of Subpart A of Part 1910 of this chapter will be followed in obtaining and verifying the applicant's qualifications and credit needs.

* * * * *

PART 1924—CONSTRUCTION AND REPAIR

21. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

22. Section 1924.51 is revised to read as follows:

§ 1924.51 General.

This subpart sets forth policies for providing management advice to farmer program loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, joint operations, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), and Economic Opportunity (EO) loans, and/or (RHF) Rural Housing loans for farm service buildings. This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a farmer program loan that is not collection-only or a judgment account, and those FO, SW and/or OL loan applicants and borrowers who use the services of a "New Full-Time Family Farmer and Rancher Development Committee." (See Exhibit A of this subpart.) This subpart does not apply to individuals who owe non-program loans (defined in § 1965.7(h) of Subpart A of Part 1965 of this chapter).

23. Section 1924.57 is amended by revising the introductory text of paragraph (b)(1), and revising paragraph (b)(1)(iv), adding a new paragraph (b)(1)(viii), revising paragraphs (b)(2), (b)(3), (c)(4), (c)(5) and (d)(2), and adding paragraph (c)(6) to read as follows:

§ 1924.57 Planning.

* * * * *

(b) * * *

(1) Form FmHA 1962-1 must be completed once each year and revised as needed in accordance with the Forms Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. There must always be a current Form FmHA 1962-1 in the file of a borrower with loans secured by chattels. Form FmHA 1962-1 should be filled out and signed at the same time as a Form FmHA 431-2 is signed if a Form FmHA 431-2 is required. The figures on the two forms must be consistent. For example, if the Form FmHA 431-2 shows the borrower plans to spend $10,000 on equipment and no FmHA loan funds are being advanced for that purpose and the borrower has no income except from the farm operation, the Form FmHA 1962-1 should show where the $10,000 will come from. (Example—Wheat, 3000 Bushels, Sold, August, $10,000, Purchase Equipment.) Form FmHA 431-2 will be required for those borrowers.

* * * * *

(iv) Who are requesting servicing options on Form FmHA 1924-26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action," while any appeal is pending. This may be an interim plan for determining the release of proceeds on Form FmHA 1962-1 for essential family living and farm operating expenses in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Such a plan does not have to meet the requirements of a feasible plan in paragraph (c)(5) of this section.

* * * * *

(viii) Who have FmHA loans secured by crops, livestock, and livestock products marketed in the regular course of business.

(2) If the County Supervisor and the borrower cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431-2 and 1962-1 when a new or subsequent loan is involved, the loan will not be made and any appeal will be handled in accordance with Supbart B of Part 1900 of this chapter. When a new

or subsequent loan is not involved, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases for essential family living and farm operating expenses. In addition, FmHA may make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Farm and Home Plan, when applicable, and a Form FmHA 1962-1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the Farm and Home Plan, when applicable, and Form FmHA 1962-1 and will explain that those documents are considered binding by FmHA. Borrowers who do not abide by those documents will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

(3) In certain cases the borrower may not indicate any disagreement with the planned use of proceeds on the Form FmHA 1962-1 but may refuse to sign the form. For these cases the County Supervisor will sign the form and mail it to the borrower with a cover letter explaining that FmHA considers the document binding unless the borrower disagrees with the planned use of proceeds and wishes to appeal in accordance with Subpart B of Part 1900 of this chapter. Borrowers that do not abide by the document will be handled in accordance with § 1962.18 of Subpart A of Part 1962 of this chapter.

* * * * *

(c) * * *

(4) Plan for the appropriate use of income with the applicant in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Form FmHA 1962-1 *must* provide for the release of sufficient income to pay essential farm operating and family living expenses.

(5) Determine the feasibility of the Farm and Home Plans. A feasible plan is necessary if a loan is being made or a servicing action is being taken. A feasible plan is not necessary if the only reason for developing the plan is to complete a Form FmHA 1962-1 in accordance with paragraph (b)(1)(iv) of this section. Feasible plans must show the borrower will be able to:

(i) Pay for operating expenses and taxes.

(ii) Meet necessary payments on debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses.

(iv) Have a reasonable standard of living for the borrower or the farm operator in the case of a corporation, partnership, joint operation or cooperative.

(v) Provide for any essential capital purchases or improvements.

(6) Will contact borrowers with loans secured by chattels 60 days prior to the expiration date for Form FmHA 1962-1 and obtain a new completed form for the upcoming year. A list will be maintained in the management systems box in the miscellaneous division in accordance with § 1905.5(d) of Subpart A of Part 1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of the form, and the date for follow-up by the County Supervisor.

* * * * *

(d) * * *

(2) Initial and subsequent plans and Form FmHA 1962-1 will be revised whenever changes in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur. The plan and Form FmHA 1962-1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the plan and Form FmHA 1962-1. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases for essential family living and farm operating expenses. In addition, FmHA may make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962-1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the form and will explain that it is considered binding by FmHA. Borrowers who do not abide by the form will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

24. The introductory text of paragraph VIII of Exhibit A to Part 1924, Supbart B is revised to read as follows:

Exhibit A of Subpart B—New Full-Time Family Farmer and Rancher Development Projects

* * * * *

VIII. *Criteria for selection of Candidates.* A candidate may be an individual, family partnership, a family joint operation, or a family corporation conducting or proposing to conduct a full-time family size farming or ranching operation and having strong agricultural background, training and/or experience, and resources other than the availability of necessary capital on suitable terms.

* * * * *

PART 1941—OPERATING LOANS

25. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

26. Section 1941.1 is revised to read as follows:

§ 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL-Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4-H, Future Farmers of America, and similar organizations. See Exhibit A of Subpart A of Part 1943 of this chapter for making OL loans to entrymen on unpatented public lands.

27. Section 1941.4 is amended by revising paragraphs (d)(3)(ii), (d)(4)(ii), redesignating paragraphs (m) through (o) as (o) through (q), redesignating paragraph (l) as (n), redesignating paragraphs (g) through (k) as (h) through (l), and adding new paragraphs (g) and (m) to read as follows:

§ 1941.4 Definitions.

* * * * *

(d) * * *

(3) * * *

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(4) * * *

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

* * * * *

(g) *Joint operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses, and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

* * * * *

(m) *Related by blood or marriage.* As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

* * * * *

28. Section 1941.11 is amended by revising paragraph (b) to read as follows:

§ 1941.11 Applications.

* * * * *

(b) If the applicant is a cooperative, corporation, partnership, or joint operation, the following information will be obtained and included in the loan docket:

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

(2) A current personal financial statement from each of the principal members of a cooperative, partners of a partnership, joint operators of a joint operation, or stockholders of a corporation. For this purpose, a principal is one owning or controlling as much as 10 percent of the ownership, stock or interest of a farming entity. If no member, partner, joint operator or stockholder owns or controls as much as 10 percent, each member, partner, joint operator or stockholder will be considered as a principal. Any other member, partner, joint operator or stockholder having an ownership interest whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the applicant entity will also be required to provide personal financial statements.

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

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

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation, partnership, or joint operation which may be pertinent to consideration of its application.

29. Section 1941.12 is amended by revising paragraphs (a)(1), (a)(8), the introductory text of paragraph (b), (b)(1), and (b)(3), the introductory text of paragraph (b)(4), paragraphs (b)(4)(i), (b)(4)(v), (b)(5), and (b)(6), and by adding paragraph (b)(7) to read as follows:

§ 1941.12 Eligibility requirements.

(a) * * *

(1) Be a citizen of the United States (see § 1941.4(q) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(8) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed (except for rural youths). In the case of a limited resource applicant see § 1941.4(h) of this subpart.

(b) A cooperative, corporation, partnership, or joint operation must:

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators, as individuals.

* * * * *

(3) Consist of members, stockholders, partners, or joint operators who do not, as individuals, have an individual FO, SW, RL or OL loan; and are not members of another entity or have an interest in another entity that has an FO, SW, RL or OL loan.

(4) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1941.4(q) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

* * * * *

(5) If the members, stockholders, partners, or joint operators holding a majority interest are not related by blood or marriage:

(i) The requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(6) If applying as a limited resource applicant, as defined in § 1941.4(h) of this subpart:

(i) The requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section must be met by the entity and all its members, stockholders, partners, or joint operators.

(ii) The entity and all the members, stockholders, partners or joint operators must own or operate a small or family farm and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's stockholder's or joint operator's ownership interest does not exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (i) All of the members of the entity are related by blood or marriage;

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

30. Section 1941.16 ia amended by revising the introductory paragraph and adding paragraph (l) to read as follows:

§ 1941.16 Loan purpose.

Except for entity borrowers, 10 percent or $5,000, whichever is less, of any OL loan will be placed in a non-supervised bank account of the borrower's choosing at loan closing. These funds will be used at the borrower's discretion for family living needs or other purposes agreed upon in the farm plan(s) of operation. Loans may be made for farm, forestry, recreation and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

* * * * *

(l) Payment of costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farming and ranching operations. The loan approval official must determine that the training will meet the objectives of the loan program, assist the borrower in his/her recordkeeping and management responsibilities, and that costs are reasonable.

31. Section 1941.19 is amended by revising the introductory paragraph and paragraph (b) to read as follows:

§ 1941.19 Security.

Ordinarily, the security must be adequate in the opinion of the loan approval official to assure repayment of the loan. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the loan approval official in determining whether the loan should be made, except that the amount refinanced may not exceed the value of the security. Except as shown in paragraph (a) of this section, the loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds and by any additional security needed. Such additional security may consist of the best lien obtainable on chattels, real estate or other property. In unusual cases, the loan approval official may require a cosigner or a pledge of security from someone other than the borrower(s). Generally, a pledge of security is preferable to a cosigner.

* * * * *

(b) *Real estate.* The loan approval official may require a lien on all or part of the applicant's real estate as security. When the amount of the loan exceeds the equity in chattel security by more than $10,000, the best lien obtainable will be taken on real estate having sufficient collateral equity to fully secure the loan(s) being made. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Form FmHA 427-1 (State), "Real Estate Mortgage for ______," will be used to obtain such a lien, unless a State supplement requires a different form.

* * * * *

32. Section 1941.25 is amended by revising the introductory paragraph to read as follows:

§ 1941.25 Appraisals.

Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals. Chattel and real estate appraisals will be made on Forms FmHA 440-21, "Appraisal of Chattel Property," FmHA 422-1, "Appraisal Report (FARM TRACT)," and FmHA 1922-11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

* * * * *

33. Section 1941.29 is amended by revising the title and paragraphs (a) through (d) to read as follows:

§ 1941.29 Relationship between FmHA loans, insured and guaranteed.

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) An insured OL will not be made to a borrower with an outstanding guaranteed OL loan.

(c) An insured OL loan will not be made to refinance a guaranteed OL loan, except when the following conditions are met:

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(d) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an OL loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE loan and any FO, SW, RL, and/or OL loans will not exceed $650,000.

* * * * *

34. Section 1941.30 is revised to read as follows:

§ 1941.30 Committee Certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440-2 "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations.

35. Section 1941.33 is amended by revising the introductory paragraph of (b)(1), paragraph (b)(2)(i), (b)(2)(vi), (c), and (d) to read as follows:

§ 1941.33 Loan approval or disapproval.

* * * * *

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

* * * * *

(2) * * *

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

* * * * *

(vi) Sign the original and one copy of Form FmHA 1940-1 and insert the title of the approval official.

(c) *Distribution of forms after loan approval.* The applicable docket forms will be distributed as outlined below by the loan approval official after a loan is approved.

(1) These forms will be sent to the Finance Office:

(i) Form FmHA 1940-1 (copy).

(ii) When funds have been obligated, the Finance Office will send to the County Office the original and one copy of Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request."

(iii) Form FmHA 492-19, "Characteristics of Approved Applicants," (original) for initial loans only. If an initial FO or SW loan is approved at the same time, only one set of forms is required.

(2) The original of Form 1940-1 and the remainder of the loan docket will be sent to the County Office.

(3) These forms will be sent to the State Office:

(i) Form FmHA 1940-1 (copy).

(ii) Form FmHA 492-19 (copy) for initial loans only. If an initial FO or SW loan is approved at the same time, only one set of forms is required.

(4) A signed copy of Form FmHA 1940-1 will be sent to the borrower on the date of loan approval.

(d) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

36. Section 1941.35 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the state office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the state office terminal system. Each advance will be limited to an amount which can be used promptly, usually within sixty days from the date of the check. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) Cancellation of loan check and/or obligation. If, for any reason, a loan check or obligation will be cancelled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940-10. (See FmHA Instruction 102.1, a copy of which may be obtained in any FmHA office.)

* * * * *

Subpart B—Closing Loans Secured by Chattels

37. Section 1941.54 is amended by revising paragraph (b)(3) to read as follows:

§ 1941.54 Promissory note.

* * * * *

(b) * * *

(3) *Partnerships or joint operations.* The note will be executed by the partnership as well as by each of the partners or joint operators, as individuals.

38. Section 1941.57 is amended by revising paragraph (a)(2) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(a) * * *

(2) Appropriate partners or joint operators on behalf of a partnership or joint operation; and the instruments will also be executed by all partners, or all joint operators, who will sign as individuals.

* * * * *

39. Section 1941.84 is revised to read as follows:

§ 1941.84 Title clearance and closing requirements.

(a) For loans over $10,000 (or EM loans over $25,000), title clearance is required when real estate is taken as security.

(b) For loans of $10,000 or less (or EM loans of $25,000 or less), and loans for which real estate is taken as security, a certification of ownership and verification of equity in real estate is required. Certification of ownership may be in the form of a notarized affidavit which is signed by applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the County Supervisor is uncertain of the record owner or debts against the estate security, a title search will be required.

(c) When real estate is taken as security, title clearance and loan closing requirements will be carried out in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

(d) If any prior liens against the real estate offered as security contain provisions (such as future advance clauses not limited to a specific amount) that could jeopardize either the security position of the Government or the applicant's ability to meet the obligations of the prior liens and FmHA loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions.

(e) If a lien is to be taken on real estate which is already subject to a lien, and if State law allows a prior lienholder to foreclose on a loan (under power of sale or otherwise) without notifying a junior lienholder of the foreclosure proceedings, the prior lienholders must agree, in writing, to give FmHA advance notice of all foreclosure proceedings and of any assignment of the mortgage.

(f) Each real estate lien will be taken on Form FmHA 427-1 (State), "Real Estate Mortgage for ______," unless a State supplement requires the use of another form.

(g) If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the purchase contract holder must agree, in writing,

that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate. If necessary, the applicant will negotiate with the purchase contract holder to arrive at a new contract without any provisions objectionable to either FmHA or the lender.

(3) If a satisfactory contract of sale cannot be negotiated or if the purchase contract holder refuses to agree to apply the insurance proceeds toward the repair or replacement of the real estate and wants to retain some of the proceeds as an extra payment on the balance owned, the applicant will make every effort to refinance the existing purchase contract.

(4) The purchase contract must not be subject to summary cancellation on default and must not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(5) The contract holder must agree, in writing, to give the Government notice of any breach by the purchaser, and must also agree to give the Government the option to rectify the conditions which amount to a breach within 30 days. The 30 days begin to run on the day the Government receives the written notice of the breach.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

40. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

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

41. Section 1943.4 is amended by revising paragraphs (d)(3)(ii) and (d)(4)(ii), current paragraphs (g) through (l) and (m) and (n) are redesignated as (h) through (m) and (o) and (p), respectively, new paragraphs (g) and (n) are added, and redesignated paragraph (i) is revised to read as follows:

§ 1943.4 Definitions.

* * * * *

(d) * * *

(3) * * *

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to cooperative, corporation, partnership, or joint operation.

(4) * * *

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership or joint operation.

* * * * *

(g) *Joint operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses, and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

* * * * *

(i) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation or partnership.

* * * * *

(n) *Related by blood or marriage.* As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

* * * * *

42. Section 1943.6 is amended by revising paragraph (d) to read as follows:

§ 1943.6 Credit elsewhere.

* * * * *

(d) Property and interests in property owned and income received by an individual applicant, a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

43. Section 1943.11 is amended by revising paragraph (b) to read as follows:

§ 1943.11 Receiving and processing applications.

* * * * *

(b) If the applicant is a cooperative, corporation, partnership, or joint operation, the following information will be obtained and included in the loan docket:

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

(2) A current personal financial statement from each of the principal members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation. For this purpose, a principal is one owning or controlling as much as 10 percent of the ownership, stock or interest of a farming entity. If no member, stockholder, partner or joint operator owns or controls as much as 10 percent, each member, stockholder, partner, or joint operator will be considered a principal. Any other member, stockholder, partner or joint operator having an ownership interest, whose financial statement in the judgment of the loan approval official would be pertinent to a consideration of the financial strength of the applicant entity, will be required to provide a personal financial statement.

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

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

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation, partnership, or joint operation which may be pertinent to a consideration of its application.

44. Section 1943.12 is amended by revising paragraph (a)(1), (a)(8), the title and the introductory paragraph (b), paragraphs (b)(1), (b)(2), (b)(3), the introductory paragraph (b)(4), and paragraphs (b)(4)(i), (b)(4)(v), (b)(5), (b)(6) and a new paragraph (b)(7) is added to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

(a) * * *

(1) Be a citizen of the United States (see § 1943.4(p) of this subpart from the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are nót eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS

Form G–641, "Application for Verification of Information for Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(8) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4(h) of this subpart).

* * * * *

(b) A cooperative, corporation, partnership, or joint operation must:

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Consist of members, stockholders, partners, or joint operators who do not, as individuals, have an individual FO, SW, RL or OL loan; and are not members of another entity or have an interest in another entity that has an FO, SW, RL or OL loan.

(4) If the members, stockholders, partners, or joint operators holding a majority interest are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1943.4(p) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(v) At least one member, stockhoder, partner, or joint operator must operate the family farm.

* * * * *

(5) If the members, stockholders, partners, or joint operators holding a majority interest are not related by blood or marriage:

(i) The requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must own and operate the family farm.

(6) If applying as a limited resources applicant, as defined in § 1943.4(h) of this subpart:

(i) The requirements of paragraph (b)(4) (i) through (iv) and (vi) of this section must be met by the entity and all its members, stockholders, partners, or joint operators.

(ii) The entity and all the members, stockholders, partners or joint operators must own or operate a small or family farm; and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's, stockholder's or joint operator's ownership interest does not exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage;

(ii) All of the members are or will be operators of the entity; and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

45. Section 1943.25 is amended by revising paragraph (c)(2) to read as follows:

§ 1943.25 Options, planning and appraisals.

* * * * *

(c) * * *

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

* * * * *

46. Section 1943.29 is revised to read as follows:

§ 1943.29 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured FO loans may be made simultaneously with other FmHA loans, and to borrowers presently indebted to FmHA, when the loan limits will not be exceeded and all requirements of the loans involved will be met.

(b) An insured FO loan will not be made to a borrower with an outstanding guaranteed FO, SW, or RL loan and paragraph (c) of this section is not intended to override this policy.

(c) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an FO loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any SW, RL, OL and FO loans will not exceed $650,000.

47. Section 1943.32 is amended by adding at the end of the table: "1922–11" in the FmHA Form No. column, "Appraisal for Mineral Rights" in the Name of form column, "1" in the Total number of copies of columns, and "1–O" in the Loan docket column.

48. Section 1943.33 is amended by revising the introductory paragraph (b)(1), by revising paragraphs (b)(2)(i), (b)(2)(iv), (b)(2)(vi), (c)(1), (c)(2), (c)(3), (c)(4), by revising the introductory paragraph (d) and by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1943.33 Loan approval or disapproval.

* * * * *

(b) * * *

(1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

* * * * *

(2) * * *

(i) Indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

* * * * *

(iv) Indicate that satisfactory title evidence has been obtained;

* * * * *

(vi) Sign the original and one copy of Form FmHA 1940–1 and insert the title of the approval official.

(c) * * *

(1) These forms will be sent to the Finance Office:

(i) Form FmHA 1940–1 (copy). When funds have been obligated, the Finance Office will send to the County Office the original and one copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

(ii) Form FmHA 443–12, "Farm Ownership Individual Soil and Water Fund Analysis," (original).

(iii) Form FmHA 492–19, "Characteristics of Approved Applicants," (original) for initial loans only. If an initial Operating (OL) or SW loan is approved at the same time, only one set of forms is required.

(2) The original of Form FmHA 1940–1 and the remainder of the loan docket will be sent to the County Office.

(3) These forms will be sent to the State Office:

(i) Form FmHA 1940–1 (copy).

(ii) Form FmHA 443–12 (copy).

(iii) Form FmHA 492–19 (copy) for initial loans only. If an initial OL or SW loan is approved at the same time only one set of forms is required.

(4) A signed copy of Form FmHA 1940–1 will be sent to the borrower on the date of loan approval.

(d) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940–1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal. (See Subpart B of Part 1900 of this chapter.)

* * * * *

49. Section 1943.35 is amended by revising the introductory paragraph (a), by revising paragraphs (a)(2) and (b)(2) and the introductory paragraph (c) to read as follows:

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the state office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the state office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

* * * * *

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the state office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) * * *

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA Office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

* * * * *

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

* * * * *

50. Section 1943.38 is amended by revising paragraph (g)(4)(iii) to read as follows:

§ 1943.38 Loan closing actions.

* * * * *

(g) * * *

(4) * * *

(iii) When a loan is made to a partnership or joint operation by all partners in the partnership of all joint operators in the joint operation.

* * * * *

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

51. Section 1943.54 is amended by redesignating current paragraphs (g) through (l) to paragraphs (h) through (m), respectively, adding new paragraph (g) and by revising new paragraph (i) to read as follows:

§ 1943.54 Definitions.

* * * * *

(g) *Joint operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses, and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

* * * * *

(i) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

* * * * *

52. Section 1943.56 is amended by revising paragraph (d) to read as follows:

§ 1943.56 Credit elsewhere.

* * * * *

(d) Property and interests in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals, will be considered and used by an applicant in obtaining credit from other sources.

53. Section 1943.61 is amended by revising paragraph (b) to read as follows:

§ 1943.61 Receiving and processing applications.

* * * * *

(b) If the applicant is a cooperative, corporation, partnership, or joint operation, the following information will be obtained and included in the loan docket:

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

(2) A current personal financial statement from each of the principal members of a cooperative, stockholders of a corporation, partners of a partnership, and joint operators of a joint operation. For this purpose, a principal is one owing or controlling as much as 10 percent of the ownership, stock or interest of a farming entity. If

no member, stockholder, partner or joint operator owns or controls as much as 10 percent, each member, stockholder, partner, or joint operator will be considered a principal. Any other member, stockholder, partner or joint operator having an ownership interest, whose financial statement in the judgment of the loan approval official would be pertinent to a consideration of the financial strength of the applicant entity, will also be required to provide a personal financial statement.

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

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

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation, partnership, or joint operation which may be pertinent to a consideration of its application.

54. Section 1943.62 is amended by revising paragraph (a)(1), the introductory paragraph (b), by revising paragraphs (b)(3), (b)(5), (b)(7), and (b)(9) to read as follows;

§ 1943.62 Soil and Water loan eligibility requirements.

(a) * * *

(1) Be a citizen of the United States (see § 1943.54(m) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalizaion Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(b) A cooperative, corporation, partnership or joint operation must:

* * * * *

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 1943.54(m) of this subpart for the definition of "United States"), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

* * * * *

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

* * * * *

(7) Be the owner or operator of the farm, after the loan is made.

* * * * *

(9) Consist of members, stockholders, partners, or joint operators, who do not as individuals have an FO, SW, RL, or OL loan and are not members of another entity that has an FO, SW, RL, or OL loan.

55. Section 1943.74 is amended by removing paragraph (f) and redesignating current paragraphs (g) and (h) to (f) and (g).

56. Section 1943.75 is amended by revising paragraph (c)(2) to read as follows:

§ 1943.75 Options, planning and appraisals.

* * * * *

(c) * * *

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

* * * * *

57. Section 1943.76 is revised to read as follows:

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with Part 1924, Subpart A of this chapter.

58. Section 1943.79 is amended by revising the title and paragraph (b), removing paragraph (c), redesignating current paragraph (d) to (c) and by revising new paragraph (c) to read as follows:

§ 1943.79 Relationship with other FmHA loans, insured and guranteed.

* * * * *

(b) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an SW loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any FO, RL, OL and SW loans will not exceed $650,000.

(c) An insured SW loan will not be made to a borrower with an outstanding guaranteed FO, SW, or RL loan, and paragraph (b) of this section is not intended to override this policy.

§ 1943.82 [Amended]

59. Section 1943.82(a) is amended by adding to the table: "1922–11" in the FmHA Form No. column, "Appraisal for Mineral Rights" in the Name of form column, "1" in the Total number of copies column, and "1–O" in the Loan docket column.

60. Section 1943.83 is amended by revising the introductory paragraph (b)(1), by revising paragraphs (b)(2)(i), (b)(2)(iv), (b)(2)(vi), (a)(1)(i), (a)(1)(iv), (a)(2), (c)(3)(i), (c)(4), the introductory paragraph (d), (d)(1), and (d)(2) to read as follows:

§ 1943.83 Loan approval or disapproval.

* * * * *

(b) * * *

(1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all

pertinent regulations. When reviewing the docket, the loan approval official will determine that:

* * * * *

(2) * * *

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

* * * * *

(iv) Indicate that satisfactory title evidence has been obtained;

* * * * *

(vi) Sign the original and one copy of Form FmHA 1940-1 and insert the title of the approval official.

(c) * * *

(1) * * *

(i) Form FmHA 1940-1 (copy).

* * * * *

(iv) Form FmHA 492-19, "Characteristics of Approved Applicants," (original) for initial loans only. If an initial Operating Loan (OL) or FO loan is approved at the same time, only one set of forms is required.

(2) The original of Form FmHA 1940-1 and the remainder of the loan docket will be sent to the County Office.

(3) * * *

(i) Form FmHA 1940-1 (copy).

* * * * *

(4) A signed copy of Form FmHA 1940-1 will be sent to the borrower on the date of loan approval.

(d) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reasons for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

* * * * *

61. § 1943.85 is amended by revising the introductory paragraph (a), by revising paragraphs (a)(2), and (b)(2), and the introductory paragraph (c) to read as follows:

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the state office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the state office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

* * * * *

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the state office terminal system. The amount of each advance should meet the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) * * *

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1 (available in any FmHA Office). The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

* * * * *

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

* * * * *

62. § 1943.88 is amended by revising paragraph (g)(4)(iii) to read as follows:

§ 1943.88 Loan closing actions.

* * * * *

(g) * * *

(4) * * *

(iii) When a loan is made to a partnership or a joint operation, the note will be executed by all partners in the partnership or all joint operators in the joint operation.

* * * * *

PART 1944—HOUSING

63. The authority citation for Part 1944 continues to read as follows:

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

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

64. § 1944.26 is amended by revising the introductory paragraph (b) to read as follows:

§ 1944.26 Application processing.

* * * * *

(b) *Processing priorities.* Applications for Section 502 RH loans will be processed in accordance with § 1910.4(b) of Subpart A of Part 1910 of this chapter with the following exceptions:

* * * * *

PART 1945—EMERGENCY

65. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

66. Sections 1945.151 through 1945.200 of Subpart D are revised to read as follows: (a completely revised Table of Contents for Subpart D is included for the convenience of the user).

Sec.

§ 1945.151 Introduction.

(a) *Policy.* This subpart prescribes the policies, procedures, and authorizations of the Farmers Home Administration (FmHA) for making insured Emergency (EM) loans to farmers, ranchers, and aquaculture operators (hereinafter referred to as farmers), as provided by law. FmHA's policy is to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract). These regulations apply to applicants/borrowers and FmHA personnel involved in making EM loans.

(b) *Program administration.* The County Supervisor is the local contact person for application processing, loan making, and loan servicing activities.

§ 1945.152 Program objectives.

The objective of EM loans is to provide financial assistance to cover actual losses sustained by eligible farmers, so that they can return to normal farming operations after sustaining substantial losses as a result of a declared/designated disaster. EM loans are made to assist eligible disaster farm victims rehabilitate and resume their normal operations. This objective will be accomplished through the extension of credit and such supervisory assistance as is determined necessary to achieve the objectives of the loan and protect the Government's interest. Supervisory assistance will be given in accordance with the provisions of Subpart B of Part 1924 of this chapter. The borrowers has the responsibility of achieving the objectives of the loan. The borrower accomplishes this by repaying the loan according to the planned repayment schedule, maintaining FmHA security property, using loan funds for planned purposes only and following a plan of operation agreed upon with FmHA.

§ 1945.153 Loans for citrus grove rehabilitation or reestablishment.

Exhibit D of this subpart, which deals with loans made to operators of citrus groves, modifies some of the provisions contained in this subpart.

§ 1945.154 Definitions and abbreviations.

(a) *Definitions.* (1) *Applicant.* The person or entity conducting the farming operation at the time of the disaster and making a request for EM loan assistance from FmHA.

(2) *Approval official.* An FmHA official who has been delegated loan approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA Office (see FmHA Instruction 1901-A, Exhibit C).

(3) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. Aquatic organisms are fish (the term "fish" includes any aquatic gilled animal commonly known as "fish", as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a written permit or lease issued to the applicant and the permit or lease must specifically identify the waters to be used solely by the applicant.

(4) *Borrower.* Any party liable for the loan or any part thereof.

(5) *Calendar year.* The 12-month period beginning January 1 and ending December 31 of any given year.

(6) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(7) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation and authorized to carry on farming, ranching, or aquaculture operations under the laws of the State(s) in which the entity will operate a farm(s).

(8) *Eligible area.* A county or similar political subdivision in which EM loans are made available.

(9) *Established farmer.* A tenant-operator or owner-operator of a family farm who was actively participating in the operation and management of a farming operation at the time of the disaster, spends a substantial portion of time in carrying out the farming operation, and had planted a crop or had purchased livestock which were on the farm at the time of the disaster. If the applicant is a cooperative, a corporation, a partnership or a joint operation, it must be primarily engaged in farming, *i.e.*, the applicant entity must derive over fifty percent (50%) of its gross income from all sources from its farming operation.

(10) *Family farm.* A farm or ranch as defined in § 1941.4(d) of Subpart A of Part 1941 of this chapter.

(11) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which are used or will be used in the production of crops or livestock. This includes aquaculture operations which meet the requirements set forth in paragraph (a)(3) of this section and includes nonfarm operations which meet the requirements set forth in paragraph (a)(21) of this section. It also includes a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

(12) *Farmer.* One who conducts a farming or ranching enterprise. One who actively manages an aquatic operation or performs such duties as are necessary to properly raise and market the products of an aquatic operation. A farmer can be an individual, a cooperative, a corporation, a joint operation or a partnership.

(13) *Farming enterprise.* The business of producing and marketing crops, livestock, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials. A livestock enterprise must be a basic part of the farming operation in order for feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops.

(i) *Single enterprise.* An enterprise which constitutes an integral part of an applicant's total farming operation. The following are examples of single enterprises:

(A) All cash field crops;

(B) All cash vegetable crops;

(C) All cash fruit and nut crops;

(D) All feed crops fed to applicant's own livestock;

(E) Beef operations;

(F) Dairy operations;

(G) Hog operations;

(H) Poultry operations;

(I) Aquaculture operations; and

(J) All other operations (*i.e.*, trees grown for timber, etc.)

Note.—Some crops such as corn may be produced as a cash or feed crop. In such cases the actual acres produced for each purpose for the best 4 of the past 5 years will be used in determining losses for each single enterprise.

(ii) *Basic part of a farming operation.* Any single enterprise which normally generates sufficient income to be considered essential to the success of the total family farming operation.

(14) *Fixture.* Generally, an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself.

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

(16) *Incidence period.* The specific date(s) during which a disaster occurred.

(17) *Insured loan.* An EM loan made directly by FmHA as lender from the Agricultural Credit Insurance Fund, and serviced by FmHA personnel.

(18) *Joint Operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

(19) *Majority or controlling interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership, or joint farming operation.

(20) *Market value.* The amount which a willing buyer would pay a willing, but not forced, seller in a completely voluntary sale.

(21) *Nonfarm enterprise.* Any business enterprise, including a recreational enterprise, which provides less than 50 percent of the total net income from all sources (farm and nonfarm), which is needed to supplement farm income. It must provide goods or services for which there is a need and a reasonably reliable market.

(22) *Normal year's production.* The normal year's production is the average per acre yield or production per animal unit of the 4 better years out of the 5 years immediately preceding the disaster year.

(23) *Partnership.* An entity consisting of individuals and/or other entities who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm, be authorized to own both real and personal property and to incur debts in its own name.

(24) *Physical loss.* Damages to or destruction of physical property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock; livestock products; harvested crops; and supplies.

(25) *Principal Members, Stockholders, Partners and Joint Operators.* Any member, stockholder, partner or joint operator owning or controlling a 10 percent interest in a cooperative, corporation, partnership or joint operation is considered a principal principal stockholder, or member, principal partner or principal joint operator. If no member, stockholder, partner or joint operator owns or controls at least a 10 percent interest, all members, partners, stockholders or joint operators will be considered principal members, partners, stockholders or joint operators.

(26) *Production loss.* The reduction in normal production, directly attributable to the natural disaster of yield per acre and/or quality of crops produced, or quantity and/or quality of livestock products produced per animal unit, and of weight gain and/or natural increases in numbers of livestock units.

(27) *Qualifying disaster.* A major disaster, Presidential Emergency, or natural disaster as defined in Subpart A of Part 1945 of this chapter.

(28) *Qualifying physical loss.* A loss caused by damage to or destruction of physical property that is essential to the successful operation of the farm, and if it is not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis.

(29) *Qualifying production loss.* The production loss an applicant sustained from the disaster that is equivalent to at least a 30 percent loss of normal per acre or per animal production in any single enterprise which is a basic part of the total farming operation. Losses of livestock increases, *e.g.*, calves, pigs, etc., are considered production losses, except when live animals are destroyed. When an animal is killed, lost or sold because of injury or reduced production potential caused by the disaster, it is considered a physical loss. Reductions in the production of livestock, livestock products or reductions in weight gains of animals, due to homegrown feed crop and/or pasture losses, will not be considered production losses when replacement feed is available to purchase, regardless of the cost of that feed (normally production losses to livestock enterprises will be based on feed crop and pasture losses). When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessability to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production losses. Production losses will be calculated based on the reduction from normal which occurs during the disruption period and the period needed to bring production back up to the normal level.

(30) *Related by blood or marriage.* As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

(31) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

(32) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(33) *Subsequent loans.* Any Em loans processed by the Finance Officer after it processed the first EM loan to a borrower. The disaster designation number is not considered in determining whether an EM loan is a subsequent loan.

(34) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date is 8 months from the date of the disaster declaration/determination/notification.

(b) *Abbreviations*. The following abbreviations are used in this subpart.

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

(2) *ECP*—Emergency Conservation Program.

(3) *EFP*—Emergency Feed Program.

(4) *EM*—Emergency Loans.

(5) *FCIC*—Federal Crop Insurance Corporation.

(6) *FEMA*—Federal Emergency Management Agency.

(7) *FIA*—Federal Insurance Administration.

(8) *FmHA*—Farmers Home Administration.

(9) *FMI*—Forms Manual Insert.

(10) *INS*—Immigration and Naturalization Service.

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

(12) *SBA*—Small Business Administration.

(13) *UCC*—Uniform Commerical Code.

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

§ 1945.155 Relationship between FmHA and other federal agencies.

(a) *SBA and FmHA*. Two Memoranda of Understanding between the SBA and USDA-FmHA pertaining to Disaster Loan Assistance are attached as Exhibit B and Exhibit B-1.

(b) *ASCS and FmHA*. A Memorandum of Understanding between the ASCS and FmHA on Disaster Assistance is attached as Exhibit C.

(c) *FCIC and FmHA*. A Memorandum of Understanding between FCIC and FmHA pertaining to crop insurance and exchanging information essential to the elimination of duplication of disaster compensatory benefits is Exhibit A of FmHA Instruction 2000-N (available in any FmHA office).

§ 1945.156 The test for credit and certification requirements for availability of credit elsewhere.

(a) *Applicants who certify that other credit is available*. Applicants applying for EM loan assistance who certify they are able to obtain sufficient and suitable credit elsewhere to meet their actual farming and family living needs are not eligible for such assistance.

(b) *Applicants who certify that other credit is NOT available*. Applicants who certify they are not able to obtain sufficient credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in this paragraph.

(1) *Test for credit for individuals and entities*. Applicants must be *unable* to obtain sufficient and suitable credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the applicant has been getting credit away from the local community where the farming operation is located, such source(s) of credit must also be contacted and considered. The applicant's equity in all assets, including, but not limited to, real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining the applicant's ability to obtain such credit from other sources. Also, the applicant must offer to pledge all assets as security when requesting credit from other lenders. Cooperatives, corporations, partnerships and joint farming operations and the principal members, stockholders, joint operators and partners, both individually and collectively, must be unable to provide the required financing from their own resources or with credit obtained from pledging those resources to other lenders. Form FmHA 1940-38, "Request for Lender's Verification of Loan Application," must be completed (with particular attention that item 2A is completed) and filed in the applicant's County Office case folder, and any additional facts concerning the findings, in all cases, must be documented and recorded in the running case record.

(2) *Test for credit certification requirements*. Applicants will certify in writing on the application form, and the County Supervisor shall make the determination whether or not adequate and suitable credit is available elsewhere to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides, for loans for similar purposes and periods of time. The County Supervisor will consider all such information obtained from other lenders in making the determination, but is required to make an independent decision concerning the applicant's ability to obtain the needed credit elsewhere. Should the County Supervisor determine that the applicant can obtain the necessary credit elsewhere to meet actual needs, the applicant will be notified, in writing, that the applicant is not eligible for an EM loan(s).

(i) For applicants whose total EM loan(s) request is for $300,000 or less, the following actions will be taken:

(A) Applicants will be required to apply for the credit need from their normal lender(s) and, if their normal lender(s) is located outside the local community, from at least one agricultural lender in the local community, to determine whether such lender(s) will provide the credit. Form(s) FmHA 1940-38 must be completed by all lending sources contacted, unless an exception is made under the provisions of paragraph (b)(2)(i)(C) of this section. Only when the applicant is not able to obtain a loan, from one or more of the lending sources contacted, will the applicant be considered for an EM loan. If the County Supervisor believes if necessary, the action required in paragraph (b)(2)(ii) of this section will be taken.

(B) When the County Supervisor receives letters or other written evidence, including Form FmHA 1940-38, from a lender(s) indicating that the applicant is unable to obtain satisfactory credit from that source(s), such correspondence will be included in the loan docket.

(C) If it appear from a review of the application that it would be unduly burdensome for the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor is familiar enough with other lenders' farm loan programs to determine that no possibility exists for the applicant to obtain the credit needed from those lenders. When this conclusion is reached, the basis for it will be recorded in the running case record, and further checks will not be necessary. However, when this exception is used, the applicant's normal lender(s) must be contacted in all cases and the results of that contact(s) must be well documented in the running case record.

(ii) For applicants whose total EM loan(s) request is for more than $300,000, the following actions will be taken:

(A) Applicants will be required to apply at not fewer than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. In addition, when an applicant has a net worth of $1 million or more and produces evidence that the necessary credit cannot be obtained in the local community, the applicant will be required to contact at least two other lending sources outside the local area. One or more of those lenders contacted must be the applicant's normal lender(s).

(B) Form FmHA 1940-38 must be completed by all lending sources contacted, returned to the county office and handled in accordance with paragraph (b)(2)(i)(B) of this section.

(C) When the County Supervisor receives Form FmHA 1940–38 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(3) *Use of nonessential assets (both farm and nonfarm) when seeking other credit.* When an EM loan(s) will be made, after other lenders have declined to provide needed credit to the applicant, the County Supervisor will, as a condition of loan approval, require the applicant and the principal owner(s) of the applicant entity to list all assets (both essential and nonessential) setting forth: why those assets and any income derived from them are needed; and how such assets and the income derived from them will be used for essential family living expenses and for maintaining a sound family farming operation(s). The loan approval official must determine that the applicant's plan for use of all assets and the income derived therefrom is acceptable; and the loan approval official will require the applicant and the principal owner(s) to mortgage and/or assign their interest in all assets to FmHA. Any assets not contributing to essential family living expenses and maintenance of a sound family farming operation will be considered nonessential; and the applicant and the principal owner(s) must, as a condition of loan approval, agree to sell the nonessential assets. The proceeds from such sale(s) will be used to reduce the amount of EM loan(s) requested, provided the assets can be sold prior to the EM loan(s) closing. If the nonessential asset(s) cannot be sold before loan(s) closing, the ownership interest in those assets will be mortgaged and/or assigned to FmHA; and a written agreement prepared and executed, in a manner approved by the OGC, the sell those assets at their present market value, within a specified period not to exceed one year from the date of loan(s) closing.

§ 1945.157–1945.160 [Reserved]

§ 1945.161 *Receiving and processing applications.*

(a) *Applications.* Applications for EM loans will be received and processed as outlined in Subpart A of Part 1910 of this chapter. Form FmHA 410–1 will be used for this purpose.

(1) Applications for initial EM loans for each disaster will be received only in areas where EM loans are made available in accordance with Subpart A of Part 1945 of this chapter, and must be postmarked or received in the county office before the specified 8-month termination date has passed. These applications must be processed within twelve months after they are filed.

(2) An applicant conducting a farming operation in different counties or locations will be considered for only one application, and will file that application in the county in which the farm headquarters is located, unless determined otherwise by the State Director. When the operation is located in more than one State, the State Directors involved will consult and determine which State will process the application and service the loan(s).

(3) Applications may be received and processed from FmHA EM loan borrowers or SBA disaster loan borrowers for that portion of the maximum EM loan originally authorized, but not requested initially from FmHA or SBA, provided the application is received within 8 months of the disaster declaration/determination/notification date.

(4) Applicants who are determined to be ineligible for an EM loan may be considered for other types of FmHA farm loans, when appropriate.

(b) *Statement of losses.* Applicant's statements of loss or damage will be obtained in support of their applications by having them complete Form FmHA 1945–22, "Certification of Disaster Losses."

(c) *ASCS verification of farm acreages, production and benefits.* From information obtained on Form FmHA 1945–22, the County Supervisor will send a separate Form FmHA 1945–29 "ASCS Verification of Farm Acreages, Production and Benefits," to the appropriate ASCS county office for verification of each ASCS Farm number that the applicant has certified constituted part of the disaster year's operation. ASCS records of acres of crops planted/grown in the disaster year, actual (proven) yields in the disaster year, ASCS established yields for the disaster year, ASCS emergency payments and the other information requested on that form must be obtained. The use of Form FmHA 1945–29 is optional for EM loans made for physical losses. It is required for EM loans made for production losses.

(d) *Evidence of operation.* If the applicant is a cooperative, corporation, partnership, or joint operation, it will provide evidence that it was operating as a cooperative, corporation, joint operation or partnership at the time the disaster loss occurred, or has changed its form in accordance with § 1945.162(1) of this subpart, after the loss occurred. The following information will be obtained and included in the loan docket:

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

(2) A current personal financial statement from each of the principal members of a cooperative, stockholders of a corporation, partners of a partnership, and joint operators of a joint operation. For this purpose, a principal is one owning or controlling as much as 10 percent of the ownership, stock or interest of a farming entity. If no member, stockholder, partner or joint operator owns or controls as much as 10 percent, each member, stockholder, partner or joint operator will be considered a principal. Any other member, stockholder, partner or joint operator having an ownership interest, whose financial statement in the judgment of the loan approval official would be pertinent to a consideration of the financial strength of the applicant entity, will also be required to provide a personal financial statement.

(3) A current financial statement (not over 30 days old at the time of filing the application) from the cooperative, corporation, partnership, or joint operation itself.

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

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation, joint operation or partnership which may be pertinent to a consideration of its application. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

§ 1945.162 Eligibility requirements.

(a) *Test for credit.* Applicants must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(b) *Citizenship.* (1) An individual applicant must be a citizen of the United States (see section 1945.154(a)(32) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District Office. (See Exhibit B of Subpart A of Part 1944 of this chapter.) The completed form will be mailed to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) More than a 50 percent interest in the cooperative, corporation, partnership or joint operation must be owned by United States citizens (see section 1945.154(a)(32) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.

(c) *Established farmer.* An applicant must be an established farmer (as defined in section 1945.154(a)(9) of this subpart) doing business either as an owner-operator or tenant-operator. An applicant who conducts the farming operation as an individual must manage the farming operation. If the applicant is a cooperative, corporation, joint operation or partnership, it must derive over fifty percent (50%) of its gross income from all sources from its farming operation, and at least one principal member, stockholder, joint operator or partner must manage the farming operation. Also, the entity must be authorized to conduct the farming operation(s) in the State(s) in which the farming operation is conducted. One who does not devote full time to the farming operation may be considered the manager provided that person, visits the farm at sufficiently frequent intervals to exercise control over the farming operation, makes decisions and gives directions on how the operation(s) should be run, and sees that the operation is being carried on properly. Any applicant that employs an outside full-time hired manager or management service does not qualify as an established farmer, regardless of the number of visits made by the individual applicant or the principal members, stockholders, partners or joint operators.

(1) An estate or trust; a corporation with over 50 percent of the ownership held by an estate, trust, another corporation, a partnership or a joint operation; a partnership or joint operation with over 50 percent of the ownership held by an estate, trust, corporation, another partnership or another joint operation is not considered to be an established farmer for EM loan purposes.

(2) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses through contracts or business arrangements with farmers are not considered to be established farmers and are not eligible. However, a grower under contract with an integrater or processor is considered an established farmer even though the applicant operates through a contract arrangement with an integrated processor, provided the operation is not managed by an outside full-time hired manager or management service. Farmers operating through contract may be considered for EM loans for physical losses and production losses. However, eligibility for and the amount of their production losses will be determined from the applicant's share of the agricultural production as set forth in the contract.

(d) *Operate in a disaster area.* An applicant for an EM loan must have sustained qualifying losses in an area in which the availability of EM loans for actual losses has been determined in accordance with Subpart A of Part 1945 of this chapter; and must have filed an application before the expiration of the termination date. When an applicant's farming operation is located both in a designated county(ies) and a non-designated county(ies) refer to § 1945.163(a)(2)(xix) of this subpart.

(e) *Losses.* An applicant must have suffered qualifying production and/or physical losses to be eligible for an EM loan. Production losses must be to property in which the applicant has an ownership interest or an interest in which a security interest can be obtained. Physical losses must be to property in which the applicant has an ownership interest. See § 1945.163 of this subpart for the methods of determining qualifying losses.

(f) *Legal capacity.* An applicant must possess the legal capacity to contract for the loan.

(g) *Training and experience.* An applicant must possess the training and/or experience, character (emphasizing repayment ability and reliability), industry and ability necessary to carry out the proposed farming operations to assure a reasonable prospect of success with the assistance of the loan, and

(h) *Honestly endeavor.* The applicant will honestly endeavor to carry out the undertakings and obligations required of the applicant in connection with the loan.

(i) *Family farm.* The applicant's farm must be a family farm as defined in § 1945.163(a)(10) of this subpart. If the applicant was conducting larger than a family farm at the time of the disaster but will be conducting a family farm at the time an EM loan is closed, the applicant meets this eligibility requirement.

(j) *Intent to continue farming.* An applicant must show an intent to continue the operation after the disaster. Those applicants who were required to stop temporarily because of the disaster loss or damage to their operations but intend to continue farming with EM loan assistance meet this requirement.

(k) *EM loan(s) to cooperatives, corporations, joint operations or partnerships.* When an EM loan is made to a cooperative, corporation, partnership or joint operation, only one initial EM loan can be made to the entity constituting the farming operation to cover the losses per disaster. However, an individual member, stockholder, joint operator or partner may qualify for a separate EM loan to cover losses to a separate farming operation which the applicant conducts as an individual on a different farm tract.

(1) If the members, stockholders, partners or joint operators holding a majority interest are related by blood or marriage, at least one member, stockholder, partner or joint operator must operate the family farm.

(2) If the members, stockholders, partners or joint operators holding a majority interest are not related by blood or marriage, the majority interest holders must operate the family farm.

(3) If an entity applicant has an operator interest in any other family operation, that farming operation must be no larger than a family farm.

(l) *Change in the form of an applicant.* A change in the form of an applicant between the time of a qualifying loss and the time an EM loan is closed does not make the applicant ineligible for EM loan assistance. (Examples of changes in form are as follows: An entity may split into its individual members or into more than one entity. One or more individuals may leave an entity. An individual may incorporate. A partnership may become a joint operation, a corporation, a cooperative, or another partnership. A corporation may become a partnership, a joint operation, a cooperative, or another corporation. A cooperative may become a joint operation, a partnership, a corporation, or another cooperative. A joint operation may become a partnership, a corporation, or another cooperative. A joint operation may become a partnership, a corporation, a cooperative or may split into individual members.) Such an applicant is eligible for EM loan assistance subject to all of the following limitations and qualifications:

(1) The applicant must meet all FmHA eligibility requirements at the time of loan closing.

(2) The applicant must not conduct an operation larger than the operation that was being conducted at the time of the disaster.

(3) In the case of an entity applicant, all of the individuals who have an interest in the entity must have had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster and/or must be heirs of those who had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster. Heirs must have been participating in the operation at the time the disaster occurred and must be engaged in the farming operation at the time of loan approval.

(4) In the case of an individual applicant, that person must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be an heir of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. An heir has to have been participating in the operation at the time the disaster occurred and has to be engaged in the farming operation at the time of loan approval.

(5) To determine the amount of an actual loss loan an applicant may receive, first calculate the actual loss suffered by the operation(s) as it existed at the time of the disaster, in accordance with section 1945.163 of this subpart. Then look at the individual applicant or the individual members, partners, joint operators or stockholders of an entity applicant and determine each person's percentage of ownership interest (or interest in which a security interest could be obtained) in the operation as it existed at the time of the disaster. For an entity applicant, add the percentages of all owners who had an interest in the entity that suffered the disaster losses. Multiply the actual loss suffered by the operation as it existed at the time of the disaster by this percentage figure; the result is the amount of actual loss loan the applicant may receive. For example, if one partner withdraws from a four-partner partnership (each person owning a 25% interest), the remaining three partners are eligible for 75 percent of the actual loss suffered by the operation as it existed at the time of the disaster.

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

Disaster losses will be reported by applicants on Form FmHA 1945-22, "Certification of Disaster Losses," which states the physical and production losses suffered as a result of the declared/designated disaster. The applicant will report, on Form FmHA 1945-22, total acres and actual yields for all crops planted and/or grown in the disaster year, and the number of all animal units and production per animal unit being maintained at the time of the disaster. This information will come from the applicant's own records or from ASCS records of acres grown and proven actual yields in the disaster year. Applicants will also report their previous 5-year production levels as set forth in paragraph (a) of this section. This form will be completed and submitted to the county office with the application, as soon as the losses and/or damages can be accurately assessed. The information provided by applicants on Form FmHA 1945-22 will be the primary basis for FmHA's calculation of qualifying losses, eligibility for EM loan(s) based on production losses, and an applicant's maximum amount of EM loan eligibility. Therefore, applicants are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945-22 can be supported by written records. Applicants will be asked to identify on that form any single farming enterprise they consider basic to the success of their total farming operation, and in which they have suffered a disaster loss. When an applicant's certified production loss claims seem unreasonable, they will be verified and the findings documented. Physical loss claims will be verified by requiring the applicant to furnish evidence of ownership and proof of the property loss or damage. Proof of ownership could be by deeds, mortgages, financial statements, insurance policies, and the like. Proof of the loss or damage could be by the applicant's own pictures, written certification by other persons or, when practical, by visual inspections by FmHA employees.

(a) *Production losses.* (1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 years' production. The applicant must select the year to be eliminated. The year selected to be eliminated must be the same year for all farm enterprises (i.e., all crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. A State Supplement will be issued which will be used in connection with paragraph (a)(1)(iii) of this section. The State Supplement will contain average production figures provided by the USDA State Crop and Livestock Reporting Service, when available. If those records are not available, the State Supplement will contain statistical data on production from similar State or Federal bodies. When this information is available by county, county averages will be used. If available only by State, the State averages will be used throughout the State. In those States where neither a County nor State average is available for an agricultural commodity(ies), the State Director, with the advice of representatives of other Federal and State agricultural agencies, will establish County or State averages and advise County Offices of these averages in the State Supplement. State Directors and Farmer Programs Chiefs in adjoining States will consult with each other before releasing these figures. An applicant must use data from the production record source(s) in the order of priority as listed in paragraphs (a)(1)(i), (i), (ii) and (iii) of this section. The applicant will identify, on Form FmHA 1945-22, the production record source(s) to be used in determining the normal year's production for each commodity that was produced on all farms operated by the applicant in the disaster year. The order of priority of production records that will be used is:

(i) The applicant's actual reliable farm records.

(ii) The Agriculture Stabilization and Conservation Service (ASCS) established yields. When this production record source is used, an applicant must obtain the information from ASCS and submit it with the application to FmHA. Therefore, when the disaster year established yield is provided by ASCS for any given crop the 5-year production history for such crop is not needed. This production record source will be used only for those commodities for which the applicant's reliable farm records were not maintained.

(iii) County or State averages. When this production record source is used, an applicant needs to provide production data for only the disaster year. The averages will be found in the State Supplement mentioned in paragraph (a)(1) of this section.

This production record source will be used only for those commodities for which neither the applicant's reliable farm records nor ASCS established yields are available.

(iv) When one source of records is not available for the full 5 years preceding the disaster year a combination of record sources in paragraphs (a) (i), (ii) and (iii) of this section will be used.

(v) When an applicant's production loss is on land being developed and maximum production capacity has not been attained, the State Director will establish normal yields on a case-by-case basis.

(2) FmHA loan official(s) will complete Form FmHA 1945–26, "Calculation of Actual Losses."

(i) In calculating production losses, the same established unit prices will be used for the disaster year and the normal year in computing the dollar value of each enterprise. Unit prices will be established in accordance with paragraph (a)(2)(iii) of this section. In the production loss calculation, those crop production yields and production per animal unit records authorized in paragraphs (a)(1) (i), (ii) and (iii) of this section will be used.

(ii) Information certified on Form FmHA 1945–22 for the disaster year for all single enterprises (as defined in § 1945.154(a)(13)(i)), which suffered a loss due to the disaster, will be transposed from Form FmHA 1945–22 to the appropriate places on Form FmHA 1945–26. The FmHA official completing Form FmHA 1945–26 is responsible for verifying loss information provided by the applicant. Information obtained from ASCS on Form FmHA 1945–29 will be cross checked with information provided by the applicant on Form FmHA 1945–22. Any discrepancies will be resolved, loss calculations adjusted if necessary, and the correct information recorded in the County Office case file. When the applicant's disaster loss is due to a reduction in quality, rather than due to a reduction in quantity, the applicant will be given credit for this by adjusting actual production yield downward. This will be accomplished by converting the dollar value of the quality loss to a yield reduction equal in value to the quality loss. When such an adjustment is necessary, the basis used in making the adjustment will be the applicant's accurate records of production and sales receipts showing the price received and the grade of the commodity in question. This information will be well documented by the County Supervisor.

(iii) The gross dollar value of production losses will be computed for all crops and all livestock enterprises, which were a part of any single enterprise that suffered losses due to the disaster, by calculating the value of the disaster year's production and subtracting that amount from the calculated value of the normal year's production. Unit prices for all agricultural commodities produced commercially in each State will be established on a Statewide basis by all FmHA State Directors each year, and published in a State Supplement to be issued not later than February 15 of each year. These commodity prices will be established by averaging the monthly market prices of each commodity for the 12-month period preceding the calendar year in which the disaster occurs. The monthly average market prices will be provided by the USDA State Crop and Livestock Reporting Service, or similar State or Federal agency or body. Once established, these prices will not be changed for any EM loan processed under any disaster occurring on or after February 1 of that calendar year and through January 31 of the next calendar year. If Statewide figures are not available, the State Director will consult with other agricultural agency representatives and agricultural lenders in the local area before establishing commodity prices. State Directors and Farmer Programs Chiefs in adjoining States will consult each other before releasing their established commodity price lists.

(iv) The amount of actual production loss will be calculated for the single enterprise which is a basic part of the farming operation (see § 1945.154(a)(13) of this subpart) by subtracting all compensatory disaster payments which are related to the disaster and which have been received or will be received; *i.e.*, crop insurance indemnity payments, ASCS disaster program payments, or any other disaster compensation for that enterprise, from the gross dollar amount of production losses for that enterprise as determined in paragraph (a)(2)(iii) of this section.

(v) Actual losses for tobacco, peanuts and other crops grown under acreage and/or poundage control will not be calculated differently than any other crop; i.e., the calculations must not include the dollar value of underproduced pounds to be sold or produced in future years. The value of underproduced poundage allotments and quotas must not be subtracted from the loss. All "controlled" crop acreages planted in the disaster year, including acreage above the producer's allotments and quotas, will be considered even though the carry-over crop is not eligible for price supports until the next marketing year.

(vi) Actual losses for spring and fall annual crops of the same species will be treated as two separate crop losses and listed separately on Forms FmHA 1945–22 and 1945–26. The crop(s) not affected by the disaster will be considered as having produced a normal year's yield.

(vii) The dollar value of the actual production loss for the single enterprise which is a basic part of the farming operation as designated by the applicant in item F, Form FmHA 1945–22, will be divided by the previously calculated normal year's gross income for that enterprise. The result should be rounded to the nearest whole number. To illustrate, if the calculation shows a 29.49 percent production loss, round it down to 29 percent. If the calculation shows a 20.50 percent loss round it up to 30 percent. This establishes the percentage reduction in production from normal for that enterprise. If the percentage loss in any single enterprise (see § 1945.154(a)(13)) which is a basic part of the farming operation equals or exceeds 30 percent, and the applicant is otherwise eligible, EM loan assistance will be considered.

(viii) Once eligibility is established based on production losses, the total production loss sustained by the applicant, directly attributable to the disaster, is computed by adding the gross dollar amount of production losses of all single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all compensatory disaster payments received or to be received for those enterprises.

(ix) The maximum EM loan for production losses is limited to *80 percent* of the total calculated actual production loss sustained by the applicant.

(x) Production losses to hayland, pasture and rangeland used for grazing livestock owned by the applicant must be based on the production from only those acres which are utilized in the disaster year. Losses may be calculated by one of three methods when approved by the State Director. The State Director will decide which one of the three methods will be used throughout the State to calculate losses to pasture and rangeland; and issue a State Supplement to this subpart, setting forth the method(s) to be used Statewide.

(A) *The price per acre method.* The price per acre method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year's gross dollar value. To calculate this, multiply the number of acres available to be grazed for the disaster year; by the established rental charge per acre per month (this figure is established by the State Director in accordance with paragraph (a)(2)(iii) of this section); by the average number of months grazed per year during the highest 4 out of the 5 preceding years.

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year; by the established rental charge per acre per month (as determined in accordance with paragraph (a)(2)(x)(A)(*1*) of this section); by the number of months the livestock were able to be grazed during the disaster year.

(*3*) Subtract the disaster year gross doller value (see paragraph (a)(2)(x)(A)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(x)(A)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(B) The charge per head or animal unit method. The charge per head or per animal unit method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply the number of animals or animal units grazed per month during the disaster year; by the established rental charge per animal or per animal unit per month (this figure is established by the State Director in accordance with paragraph (a)(2)(iii) of this section); by the average number of months grazed per year during the highest 4 out of the preceding 5 years.

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply the number of animals or animal units grazed per month during the disaster year; by the established normal rental charge per animal or per animal unit per month (as determined in accordance with paragraph (a)(2)(x)(B)(*1*) of this section); by the number of months grazed during the disaster year.

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(x)(B)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(x)(B)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(C) The forage equivalent method. The forage equivalent method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year; by the established price per pound or ton (this figure is established by the State Director in accordance with paragraph (a)(2)(iii) of this section); by the average number of pounds or tons of forage equivalent produced per acre per year during the highest 4 out of the preceding 5 years for forage of the type being used in this calculation. (The State Office will set forth the forage equivalent values to be used or the methodology to be used to derive this value in a State Supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination).

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year; by the established price per pound or ton (this figure is established by the State Director in accordance with paragraph (a)(2)(x)(C)(*1*) of this section); by the number of pounds or tons of forage equivalent produced for forage of the type being used in this calculation produced in the disaster year. (See paragraph (a)(2)(x)(C)(*1*) of this section for further information.)

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(x)(C)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(x)(C)(*1*) of this section) to determine the value of pasture loss during the disaster year.

(xi) When a crop cannot be planted, an applicant may treat the loss either as a production loss or as a physical loss (see paragraph (b) of this section). When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in this paragraph. Such loss will be calculated as follows: Add all income that is derived from the enterprise to the variable and fixed costs which are not incurred because of the disaster. (The cost figures will be derived from current crop enterprise budgets prepared by State Agricultural Extension Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

(xii) When a crop can be only partially planted due to a disaster or when perennial crops (such as fruits or nuts) already growing cannot be produced or harvested due to a disaster, the loss will be considered a production loss. Such loss will be calculated as set out in paragraph (a)(2)(xi) of this section.

(xiii) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945–22 for the disaster year but only if no part of the crop could be harvested and no substitute crop could be planted and harvested. When figuring the actual dollar amount of production losses subtract the normal costs of harvesting and marketing which were not incurred for crops which were completely destroyed by a disaster. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop and the actual yield for the substitute crop on Form FmHA 1945–22. On Form FmHA 1945–26, the dollar value of the substitute crop must be subtracted from the dollar value of the normal year's production.

(xiv) Losses to feed crops will be established by determining the normal year's gross dollar value of those crops and subtracting the disaster year's gross dollar value of feed crops. The difference establishes the disaster year's gross dollar loss for feed crops. The gross dollar value of feed crops produced is derived by multiplying the number of feed crop acres by the yield per acre by the unit price.

(xv) When a applicant elects to sell feeder livestock at an earlier date than usual rather than purchase feed to replace that which was lost as a result of the disaster, the difference between what the sale price would have been if the livestock had been fed for the normal period and the disaster year's premature sale price may not be claimed as a loss.

(xvi) Eligibility for production losses to livestock enterprises may be based either on loss of production in feed crops, including pasture, to be fed to the applicant's own livestock; or on loss (from normal) of weight gain of the livestock or livestock products produced, but not both. The value of feed produced on native rangeland and pasture constitutes a small portion of the total input costs of maintaining a foundation herd of breeding animals and their offspring. Therefore, loan approval officials will calculate production losses to livestock operations based on reductions in animal unit weight gain and natural increase in numbers.

(xvii) Claims of production losses from the applicant will be verified by FmHA when the applicant's claims appear to be unreasonable.

(xviii) Production losses for orchard crops (fruit or nut) will be only for the crop loss due to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(xix) When an applicant's farming operation(s) is conducted in a designated county(ies) and a nondesignated county(ies), eligibility will be established based on losses to a single enterprise which constitutes a basic part of the farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's actual yields, both in the designated and nondesignated counties, will be used to determine losses. Compensatory payments will be subtracted as explained in paragraph (a)(2)(iv) of this section when determining eligibility. The amount of the production loss loan will be limited to the production loss sustained in the designated county, minus compensatory payments received or to be received for that portion of the farming operation located in the designated county.

(xx) The County Supervisor will assign normal yields to all unplanted acreage covered by a Payment in Kind (PIK) contract, when calculating crop production losses on Form FmHA 1945–26.

(b) *Physical losses.* (1) In order to qualify for an EM loan(s) for physical losses, the damaged or destroyed physical property must be essential to the successful operation of the farm and if not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis. The financing necessary to recover from the physical loss must be actually needed to permit the applicant to continue the operation.

(2) The claimed value of all physical losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement requested.

(3) Physical loss loan funds can be used to pay for only contracted or hired labor and materials and supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary repair and replacement.

(4) Damage to or destruction of nonessential buildings, structures or other items will not be repaired or replaced with EM physical loss loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for losses to essential farm buildings, structures and other items which need to be repaired or replaced.

(5) The maximum physical loss loan(s) will be determined by subtracting all insurance claims and any other compensation received or to be received for physical disaster losses from the value of all actual physical losses caused by the disaster.

(6) The physical loss equals the market value at the time of the disaster for items lost, damaged or destroyed by or as a result of the disaster. Such items included:

(i) Livestock

(A) Death of an animal(s) caused by the disaster.

(B) Disaster related damage to an animal's(s') health, which has impaired or reduced its normal production capability and its market value. This includes forced reductions of foundation breeding stock caused by the disaster. Physical losses, under these conditions, would be calculated by establishing a dollar value per head, or unit, at the time the disaster occurred, and deducting the reduced dollar value received from the disaster caused sale of the animals. The difference in the two values would be considered a physical loss. (The animals sold must be over and above the numbers normally culled each year).

(ii) Livestock products on hand or stored.

(iii) Harvested crops on hand or stored.

(iv) Supplies on hand.

(7) The actual physical loss for farm dwellings to be used by the operator and existing labor is the lesser of:

(i) The market value of the property at the time it was damaged or destroyed; or

(ii) The amount required to repair the dwelling or replace it with one which will meet all applicable code requirements; and which will provide permanent, adequate, decent, safe, sanitary and modest living quarters.

(8) The actual physical loss for farm service buildings and farm real estate other than buildings is the amount required to repair the property or replace it with a building or property of like quality and capacity which will meet all applicable code requirements and which will adequately meet the needs of the farming operation. This amount cannot exceed the market value of the property at the time of the disaster.

(9) The actual physical loss for income-producing trees (fruit or nuts) is the cost of removing the damaged or destroyed trees, cleaning debris and preparing the land for replanting, plus the cost of suitable replacement trees and other expenses necessary to reestablish income-producing trees. Losses will not be determined by establishing a value for the trees destroyed or damaged. Any salvage value will be deducted from the loss. The applicant may choose to replace the damaged or destroyed trees with a different enterprise and may use actual loss loan funds for that purpose. (See Exhibit D of this subpart for physical loss loans to citrus growers.)

(10) The actual physical loss to trees (grown for timber) will be determined by establishing the value of trees less any salvage value. This estimate of value must be determined by a recognized forester who will cruise the timber and establish the value of the destroyed and damaged trees. The applicant may choose to replace the demaged tree enterprise with a different enterprise and use the actual loss loan funds for that purpose. Those applicants whose major farming enterprises are other than tree farming, but who have a wood lot that has been damaged, will have their tree losses considered as physical losses in the same manner as set forth for tree farms.

(11) The actual physical loss for crops growing or pasture is the cost of cleaning debris, preparing the land for replanting, seed, fertilizer, and other expenses necessary to reestablish the crops or pasture. These costs can exceed the market value of the crops or pasture at the time of the disaster.

(12) When a crop cannot be planted during the disaster year due to the disaster and the applicant chooses to treat the loss as a physical loss, the actual physical loss is limited to the cost of land preparation, other expenses incurred to the date of the disaster for crops that could not be planted, and a pro rata share of the total operation's fixed costs such as rent, taxes, and insurance. The applicant must provide an itemized list of all the claimed expenses incurred in the disaster year for those enterprises for which disaster losses are claimed. This list must be signed by the applicant. The amount of an EM loan cannot exceed the total itemized expenses listed by the applicant.

(13) EM loans will not be made to flood and mudslide victims to repair or replace damaged or destroyed farm

dwellings or farm service buildings and their contents in areas where "National Flood Insurance" is available, except as authorized in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(14) When an applicant has only housing losses and is eligible for an SBA physical loss loan in an area where SBA physical loss loans are available, only SBA will make the loans for restoration or replacement of farm housing.

(c) *Compensation for losses.* Compensation for losses from a disaster through insurance, government disaster program benefits or any other disaster program relief received by an EM loan applicant, which does not have to be repaid, will reduce the applicant's loss by the amount of such compensation, and thus will be considered in determining the applicant's eligibility for EM loan assistance and the maximum amount of loss loan entitlement. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments will be considered as compensation for losses (ASCS Deficiency Payments are not to be considered as compensation). The amount of any SBA physical disaster loan assistance received for the same disaster, based on physical and/or production losses to the same property will not be considered as compensation in determining the applicant's eligibility, but will be deducted from the applicant's actual disaster losses in determining the applicant's maximum actual loss loan entitlement.

(d) *Maximum EM loans.* This amount will be limited to the amount necessary to restore the farm to its pre-disaster condition; however, this will not exceed the sum of the maximum production loss (paragraph (a)(2)(ix) of this section) and the maximum physical loss (paragraph (b) of this section) or $500,000, whichever is the lesser. If the applicant has also received an SBA disaster loan for the same losses, the sum of the EM loan and the SBA disaster loan cannot exceed $500,000. Indebted EM loan borrowers could receive later EM loans not to exceed $500,000 for each additional qualifying disaster.

§ 1945.164-1945.165 [Reserved]

§ 1954.166 Loan purposes.

(a) *Policy on use of EM loan funds.* (1) The amount of the maximum EM loans(s) in addition to the limitations contained in § 1945.163 (a) (2)(ix) and (d) of this subpart, is further limited to the actual dollar loss, or the actual amount of essential family, farm, and nonfarm enterprise credit that the applicant needs to carry on normal operations, whichever is the lesser. EM loan funds will not be used to finance a nonfarm enterprise, unless the loan is made to an individual applicant and such enterprise is needed to support a reasonable standard of living for the family. The use of EM loan funds will be identified in the farm and home plan so that determination can be made as to whether such loan(s) were used for authorized purposes and covered all or a portion of the actual dollar loss.

(2) EM loan funds may be used for any Subtitle A, or Subtitle B, loan purpose as described in paragraphs (b) and (c) of this section.

(b) *EM loans for real estate (Subtitle A) purposes.* EM loans for real estate purposes may be made to owner-operators only. The following are authorized real estate purposes for which EM loan funds may be used:

(1) Purchase real estate necessary to:

(i) Replace land and/or water resources that cannot be restored due to the disaster;

(ii) Establish a new site for farm dwellings and service buildings so that the applicant can relocate outside of a flood or mudslide prone area;

(iii) Replace land necessary to restore an effective operation which was liquidated as a result of the disaster before an EM loan could be made.

(2) Construct, buy, or improve buildings and facilities essential to the applicant's farming operation, including:

(i) The construction of an essential farm dwelling and service buildings of modest design and cost, and facilities and structures for nonfarm enterprises.

(ii) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(iii) The purchase and/or installation of water and sewage systems and other equipment, including pollution control and energy saving devices necessary to operate a farm and/or a nonfarm enterprise, provided the items upon installation become part of the real estate, or customarily pass with the farm when it is sold.

(3) Provide land and water development; pollution control and energy saving measures; acquire water supplies and rights; and promote the use of conservation measures essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes, improving orchards, and establishing and improving permanent hay or pasture. Sources of water may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the water and rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development, only when the total cost of the development and machinery or equipment would not exceed the cost of contracting the work or hiring the labor and machinery needed to do it. Loan funds may be used to pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs such as the Agricultural Conservation or Great Plains programs, but only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to FmHA.

(i) Funds may be used to pay for development costs on land owned with defective title (see § 1943.19(b) of Subpart A of Part 1943 of this chapter) or on land in which the applicant owns an undivided interest, provided:

(A) The amount of loan funds used on such land is limited to $25,000;

(B) There is adequate security for the loan; and

(C) The tract with defective title or undivided interest is not to be included in the appraisal report.

(4) Refinance secured and unsecured debts, including FmHA debts subject to all of the following:

(i) The applicant's present creditors will not furnish credit, even with a FmHA guaranteed operating or farm ownership loan, at rates and terms the applicant can meet.

(ii) When applicants request refinancing of loans owed normal lenders, such as banks, Production Credit Associations, Federal Land Banks or insurance companies, the County Supervisor will obtain, early in the loan processing, such lender's determination with respect to furnishing the applicant the additional credit necessary to accomplish the objectives of the EM loan and reestablish the applicant's operations on a sound basis within the applicant's ability to pay.

(iii) Loans will not normally be made to refinance intermediate and long-term debts. Only existing delinquent installments, plus the next installment which the applicant cannot pay, can be refinanced. In unusual circumstances, when the above refinancing is essential to enable the applicant to conduct a sound farming operation the above provisions may be waived. Ordinarily, in the case of old unsecured debts or inadequately secured debts, applicants will be requested to contact their creditor(s) and make every effort to obtain a substantial compromise reduction of such debts before they are refinanced, pursuant to Subpart A of Part 1903 of this chapter.

(iv) The County Supervisor must contact the appropriate lender; verify and document, either in the running record or by letter from the lender, the need to refinance secured debts and major unsecured debts; and determine the reason(s) the lender will not carry the debt. The unpaid balance of the debts to be refinanced will also be verified.

(5) Pay reasonable expenses customarily paid when obtaining, planning, making and closing a loan made for real estate purposes, such as fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development. It is not intended that this paragraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets, including farm and home plans and other FmHA forms used in processing such loans.

(6) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned acreage for such enterprise is not physically located on the farmland.

(7) Pay the first year's premium for required insurance on buildings on the property which are to serve as security for the loan. Buildings will be insured in accordance with Subpart A of Part 1806 of this chapter (FmHA Instructon 426.1), except when the appraisal report shows that the land alone adequately secures the loan. However, the applicant will be encouraged to take property insurance on essential buildings to protect the applicant's own interest. Borrowers eligible for insurance under the National Flood Insurance Act of 1968 will be advised of its availability in accordance with Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(c) *EM loan for operating (Subtitle B purposes).* EM loans for operating purposes may be made to owner-operators or tenant-operators. The following are authorized operating purposes for which EM loan funds may be used.

(1) Purchase machinery and equipment, livestock, poultry, fur bearing and other farm animals, aquatic organisms, worms, birds, tools, bees, and supplies; or to purchase an individual's or entity's undivided interest in such items; and pay farm operating expenses and costs incidental to reorganizing the farming system which will provide for a sound operation.

(2) Purchase and repair essential home equipment and furnishings, and pay essential family living expenses required by the individual applicant's family to sustain itself in a reasonably satisfactory manner. Entity operations are not eligible for loan funds to be used for these purposes.

(3) Refinance secured and unsecured annual operating type debts in whole or in part, including existing FmHA debts, and/or pay current or delinquent installments owed on other unsecured debts.

(4) Purchase milk base, either with or without cows, when such action is necessary to assure the borrower a satisfactory market for dairy production.

(5) Purchase grazing licenses, permits, or rights which can be validly sold and transferred.

(6) Augment and improve existing water supplies to alleviate the adverse effects of drought and other natural disasters.

(7) Purchase membership and stock in farm purchasing, farm marketing, or farm service-type cooperative associations, including grazing associations.

(8) Pay a secured creditor an amount not to exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment under prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is the lesser.

(9) Purchase a franchise, contract, or privilege when essential to the operation of the planned enterprise.

(10) Make a partial payment on crop storage and drying facilities when the Commodity Credit Corporation (CCC), through the ASCS, is providing the rest of the credit under the CCC Farm Storage and Drying Equipment Loan Program.

(11) Pay reasonable expenses customarily paid when obtaining, planning and closing a loan made for operating purposes, *i.e.*, fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. It is not intended that this paragraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets including farm and home plans and other FmHA forms used in processing such loans.

(12) Pay the borrower's share of Social Security taxes for the labor hired by the borrower in connection with land and building development.

§ 1945.167 Loan limitations and special provisions.

(a) *EM loans prohibited on crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will *not* be eligible for EM loans to cover damages and losses to any crop(s) planted and harvested after December 31, 1986, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans on those crops which could have been insured against the losses, unless the crops were not planted due to the declared/designated/authorized disaster(s).

(b) *Use of EM loan funds is not authorized for expansion purpose(s) beyond a family size farm.* EM loan funds will not be used to expand an applicant's farming, ranching, or aquaculture operation beyond that which constitutes a family size farming/ranching operation(s). This limitation is not intended to prohibit minor changes in crop or livestock enterprises provided:

(1) Any new or changed crop or livestock system is proven for the area; and

(2) The applicant has the knowledge and ability to manage the changed operation; and

(3) Substantial new or additional capital investment is not required.

EM applicants who conduct family size farming operations (as defined in paragraph (a)(10) of section 1945.154 of this subpart) may, if eligible, receive regular FmHA farm ownership (FO), and/or operating (OL) loans simultaneously with their initial (EM) loan to help finance their farming operations. If a borrower expands the farming operation(s) beyond a family size farming operation(s), no further EM loan assistance will be given even though the borrower may suffer qualifying losses under a new declared/designated/authorized disaster.

(c) *Applicants involved in more than one operation.* Loans to applicants involved in more than one farming operation will be considered as follows:

(1) If an applicant, in addition to the applicant's own farming operation, owns or controls 50 percent or more of another farming operation(s), and the applicant is actively engaged in both operations, both the applicant and the other farm operation(s) may be considered for separate loans provided the combined total does not exceed the loan limitations as set out in § 1945.163(d) of this subpart.

(2) If the applicant is a cooperative, corporation, joint operation or partnership and any principal member, stockholder, partner or joint operator, owns or controls 50 percent or more of another farming operation(s) and is actively engaged in both operations, both the applicant entity and the other farming operation(s) may be considered for separate loans provided the combined total does not exceed the loan limitations as set out in § 1945.163(d) of this subpart.

(3) If an applicant, including any principal member, stockholder, partner or joint operator who, in addition to the applicant's own farm operation, owns or controls less than 50 percent of another farm operation(s), and is actively engaged in a separate farm operation(s), the applicant and the other farm operation(s) will be considered as separate entities for application of the loan limitations.

(4) If the applicant described in paragraphs (c) (1), (2) and (3) of this section is deemed to be ineligible, such determination shall not preclude the other operation(s) in which the applicant holds an interest from being considered for an EM loan(s).

(d) *Refinancing guaranteed loans.* An EM loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

(1) The circumstances causing the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government.

(e) *New appraisals.* New "Appraisal of Real Estate Reports" are not required if the appraisal report in the file is not over two years old, unless the approval official requests a new appraisal report, or unless significant changes in the market value of real estate have occurred in an area within the two-year period. Any changes in the value of real estate or chattel security will be recorded, dated and initialed by the certified appraiser on the appropriate appraisal reports in the file.

(f) *Recordkeeping.* EM borrowers receiving or indebted for EM loans of $100,000 or more are required to keep hard farm records on an approved format or use an accountant or a farm management service computer system as long as they are indebted for EM loans. EM borrowers are required to retain these records for three years. (See Subpart B of Part 1924 of this chapter.)

(g) *Disbursement of loan funds.* Loan funds which will not be disbursed for specific purposes at loan closing will not be requested in the initial request for funds from the Finance Office. The "Loan Disbursement System" will be used to make funds available when they are actually needed. See § 1945.189(a)(8) of this subpart for instructions on the use of supervised bank accounts.

(h) *Prohibition on guaranteeing repayment of advances from other credit sources.* FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

§ 1945.168 Rates and terms.

(a) *Interest rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance.

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life of the security and the repayment ability of the applicant, as reflected in the completed Farm and Home Plan, when setting the term of each loan. There must be some payment scheduled at least annually. Loans will not be scheduled for terms longer than are justified and supported by the Farm and Home Plan.

(1) *Operating purposes (Subtitle B).* EM loans made for operating purposes will be scheduled for repayment as follows:

(i) Normally, loans will be scheduled for payment in a period not to exceed 7 years. However, loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term, and the loan(s) can be secured for the longer term. Such longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the Farm and Home Plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the county office case file. Generally, real estate will be needed as security when a repayment period is longer than 7 years.

(ii) Loans made for production expenses under § 1945.166(c) of this subpart, or for payment of bills incurred for such purposes for the operating or crop year being financed, will be scheduled for repayment when the principal income from the year's operations is normally received.

(iii) Loans made to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be scheduled for repayment when the principal income from the sale of such livestock or livestock products is planned to be received.

(iv) When conditions warrant, installments may vary in amount. However, there must be at least a partial interest payment scheduled annually. Also, the final installment will not be larger than the amount which can be expected to be refinanced by other agricultural lenders or be repaid within a rescheduled period of not to exceed 15 years. The applicant must be advised before the loan is closed that FmHA will review each case at the end of the initial loan term to determine if rescheduling is warranted, and that there is no obligation for FmHA to continue with the borrower after the expiration of the initial loan term.

(2) *Real estate purposes (Subtitle A).* EM loans made for real estate purposes under § 1945.166(b) of this subpart will normally be scheduled for repayment in not to exceed 30 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. A longer term may be approved as warranted, but cannot exceed 40 years. The longer repayment period will be used only when it is evident the applicant will be unable to repay the loan in a shorter period. The reason(s) for giving the longer period must be well

documented in the county office case file.

(3) *Repayment terms when debts are refinanced.* When secured or unsecured debts are refinanced with an EM loan, the type of security taken will determine the terms and the type of assistance code used on Form FmHA 1940-1, "Request for Obligation of Funds."

(i) When the primary security is other than real estate, the loan may be scheduled for repayment in accordance with paragraph (b)(1) of this section.

(ii) When real estate will serve as the primary security, the loan may be scheduled for repayment in accordance with paragraph (b)(2) of this section.

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

(d) *Graduation.* Borrowers will be required to graduate when FmHA determines they are able to obtain their needed credit from conventional sources. All borrowers will be advised that they will be reviewed for graduation periodically in accordance with the graduation procedure in Subpart F of Part 1951 of this chapter. EM borrowers will be reviewed every two (2) years thereafter, until graduation is achieved or the EM indebtedness is paid in full. Applicants will be advised during loan processing and again at loan closing that they will be required to refinance at any time when other satisfactory credit is available to them, even though their loans have not fully matured.

§ 1945.169 Security requirements.

The County Supervisor is responsible for seeing that adequate and proper security is obtained and maintained and that the security instruments have been properly executed and recorded to protect the interest of the Government.

(a) *General Requirements.* (1) Except for the modifications contained in paragraph (d) of this section, security must be of such a nature and extent that repayment of the loan(s) is assured, considering the applicant's managerial ability, soundness of the operation, and projected earnings. Security for loans may include, but is not limited to the following: Land, buildings, structures, fixtures, furniture, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security may also include assignments of leases or leasehold interests having a mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(2) A lien will not be taken on property that cannot be made subject to a valid lien; nor will a lien be taken on subsistence livestock, household goods, small tools and small equipment such as handtools, power lawn mowers, and other items of like type not needed for security purposes. A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock, other than livestock being fed for market, and the loan is otherwise well secured.

(3) When insured and guaranteed loans are involved with the same borrower, separate security must be clearly identified for each of the insured and guaranteed loans.

(b) *Personal liability.* The signatures of all principal partners of a partnership, principal members of a cooperative and principal stockholders of a corporation are required to evidence their full personal liabilities on the promissory note as individuals, except in unusual circumstances including legal disability or extended absence from the country.

(1) When the applicant is an unincorporated farm cooperative, the promissory note will be executed so as to evidence the liability of the cooperative as well as each member as an individual.

(2) When the applicant is a corporation or an incorporated cooperative, the promissory note will be executed by the corporation or cooperative acting through its authorized officials. To evidence the principal stockholders' or members' liability as individuals, each principal stockholder or member will sign the note.

(3) When the applicant is a partnership or joint operation, the promissory note will be executed so as to evidence the liability of the partnership or joint operation, as well as each partner or each joint operator, as an individual.

(c) *Personal and corporate guarantees.* (1) If a review of all credit factors indicates the need for additional security, the loan approval official may require additional personal and/or corporate guarantees, including guarantees from principals of parent, subsidiary or affiliated companies. The loan approval official will require that such guarantees be secured by security which has an equity value. Any security referred to in paragraph (a)(1) of this section may be used to secure the guarantees.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 30 days old at time of filing), signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 30 days old at time of filing), certified by an officer of the corporation.

(3) When security is taken under paragraph (c) of this section it will be serviced in accordance with Subpart A of Part 1962 of this chapter, if chattels; and in accordance with Subpart A of Part 1965 of this chapter, if real estate.

(d) *Applicant's repayment ability.* When adequate security is not available because of the disaster, the loan approval official will accept as security such collateral as is available, if the following conditions are met:

(1) A portion or all of the security has depreciated in value due to the disaster; and

(2) The available security, together with the approval official's confidence in the applicant's repayment ability, is adequate to secure the loan. When considering "repayment ability" as a form of security, the reserve or margin between the balance available for debt repayment shown on the Farm and Home Plan, and the principal and interest scheduled for payment is the "repayment ability" collateral which may be considered in loan making actions when this plan is developed for the typical year. The "typical year" plan must show that the portion of the loan secured by "repayment ability" will be paid back in a reasonable period of time, *i.e.*, the loan balance will be reduced to a fully secured loan within 3 years.

(e) *Life insurance.* If the loan approval official believes it is needed as additional security, life insurance may be required for the individual borrower or for the principals and key employees of an entity borrower listing FmHA as the beneficiary. This life insurance may be decreasing term insurance. A schedule of life insurance available as security for the loan will be included as part of the application.

(f) *Security for operating type purposes.* (1) EM loans made for Subtitle B (operating) purposes will be secured by a first lien on the crop(s) and/or livestock and livestock products being financed with EM loan funds. However, if the applicant does not have sufficient equity to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken to assure that the Government's financial interest will be protected. When the applicant can provide no security other than a first lien on the crop(s) and/or livestock and livestock products to be produced, the amount of the loan will be limited to 75 percent of the planned gross farm income as shown on the Farm and Home Plan based on normal production and prices authorized by the State Director for developing annual farm plans within the State.

(2) The advice of OGC will be obtained on how to perfect a security interest when milk base and grazing permits are taken as security.

(3) General intangibles, accounts receivable, and contract rights may be taken as security for production loss loans made to contract feeders, tenants with share-lease arrangements, or other farmers with similar arrangements.

(g) *Security for real estate type purposes.* EM loans made for Subtitle A (real estate purposes) will be secured by a lien on real estate. However, if the applicant does not have sufficient equity in the real estate to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken.

(h) *Combination of real estate and chattel security.* When chattels are primarily relied upon as security and real estate is taken only as additional security to better protect the Government's interest, only a certification of ownership and verification of equity in real estate is required, if the applicant is an individual. Certification of ownership may be accepted in the form of a notarized affidavit from the applicant stating who is the owner of record of the real estate in question and acknowledging all known debts, with balances owed, against the real estate. Whenever the County Supervisor is uncertain of the ownership of or debts against the real estate security, and for all loans to cooperatives, corporations, partnerships, or joint operations a title search is required.

(i) *Purchase contracts.* If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the seller must agree in writing that any insurance proceeds received for real estate losses will be used only to replace or repair the damaged real estate improvements which are essential to the farming operation; or used for other essential real estate improvements; or paid on the EM loan or on any prior real estate indebtedness, including the purchase contract. If necessary, the applicant will negotiate with the seller to arrive at a new contract without any provisions objectionable to FmHA.

(3) If a satisfactory contract for sale cannot be negotiated or the seller refuses to enter into the agreement described in paragraph (i)(2) of this section, the applicant will make every effort to refinance the existing purchase contract. If the applicant cannot obtain refinancing from another source, EM loan funds may be considered to pay off the contract.

(4) If the conditions set out in paragraphs (i) (1), (2) and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA escrow agent or designated attorney certifies on Form FmHA 427–10, "Final Title Opinion", or in separate writing that:

(i) The purchase contract is not subject to summary cancellation on default and does not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(ii) The seller has agreed, in writing, to give FmHA notice of any breach by the purchaser, and has also agreed to give FmHA the option to rectify the condition(s) which amounts to a breach within thirty days. The thirty days begin to run on the day FmHA receives written notice of the breach.

(j) *Prior liens which may jeopardize the Government's security position.* If any prior liens against real estate offered as security contain future advance provisions or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations of these prior liens and to pay the EM loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government. However, the Government's lien may be subject to the lien of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or calendar year. The County Supervisor will determine if the creditor will be required to execute Form FmHA 441–13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the OGC.

(k) *Circumstances under which advance notice of foreclosure or assignment is required.* When a junior lien on real estate is to be taken as security for a loan in States where a prior lienholder may foreclose the security instrument under power of sale, or otherwise, and extinguish junior liens of private parties without giving junior lienholders actual notice of the foreclosure proceedings, the prior lienholder must agree in writing to give FmHA advance notice of foreclosure or assignment of the mortgage.

(l) *Hazard insurance.* Hazard insurance with a standard mortgage clause naming FmHA as beneficiary may be required for every loan made. The minimum amount of insurance required is the lesser of the replacement cost of the property being insured or the amount of the loan. If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate hazard insurance coverage at the time of loan closing, or as of the date materials are delivered to the property, whichever is appropriate. Notwithstanding the requirements of Subpart A of Part 1806 (FmHA Instruction 426.1) of this chapter, when the real estate appraisal report shows that the present market value of the land after deducting the value of buildings shown on the report exceeds the amount of the debt (including the EM loan) and the owner has equity equal to or exceeding the amount of the debt (including the EM loan), real estate property insurance may not be required. However, the applicant will be encouraged to obtain such insurance, if the applicant does not already have it, to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that, when settlement is made, the proceeds of such claims will be used for replacement or repair of buildings, application on debt secured by prior liens, or applications on the EM loan.

(m) *Crop insurance.* Crop insurance is a good farm management tool. Loan approval officials will, therefore, encourage all borrowers, who grow crops, to obtain and maintain FCIC crop insurance or multi-peril crop insurance, if it is available.

(1) When EM loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and those crops will serve as security for the loan, crop insurance will be required, if available, as a loan approval condition; and FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) Even if FmHA is *not* the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), FmHA will require the borrower to carry crop insurance, if available, even if the primary lender will be the beneficiary under the "Assignment of Indemnity".

(3) When EM loans are based on physical losses only, crop insurance will not be required unless the EM loan funds are to be used for annual crop production expenses.

(4) When payment of crop insurance premiums is not required until after harvest, the premiums will be paid by releasing insured crop(s) sale proceeds, not withstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905-12, "Monthly Expirations," of the dates which borrowers' crop insurance premiums must be paid. This is in accordance with FmHA Instruction 1905-A, a copy of which is available in any FmHA office, and will assure that crop insurance policies do not terminate while insured crop(s) serve as security for FmHA loans.

(n) *Indian trust lands.* EM loans which are secured by trust or restricted land will be handled as follows: USDA and the Department of the Interior have agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restrictions against alienation, subject to statutes under which they may, with the approval of the Secretary of the Interior, give valid and enforceable mortgages on their land. These statutes include, but are not limited to, the Act of March 29, 1956 (70 Stat. 62). When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the Area Director or other appropriate local offical of the BIA as to the manner in which the information will be requested and furnished. A State Supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under these conditions.

(o) *Unpatented public lands.* See Exhibit A of Subpart A of Part 1943 of this chapter for making EM loans to entrymen on unpatented public lands.

(p) *Taking security instruments.* The taking and filing of security instruments will be in accordance with Subpart B of Part 1941 of this chapter (chattels and crops) and with §§ 1945.169 and 1945.189 of this subpart (real estate). The borrower must have marketable title to the property which secures the loan and FmHA must ascertain that, when the security instruments are filed, no suits are pending or threatened which would adversely affect the interest of the borrower and the Government.

(q) *Assignments and consents.* (1) The value of stock required to be purchased by Federal Land Bank (FLB) Association borrowers may be added to the recommended market value of real estate, provided:

(i) An assignment can be obtained on the stock; or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan as long as any FmHA loan is outstanding, or

(B) The stock refund check is made payble to the borrower and FmHA.

(iii) The total of the stock value and the recommended market value of real estate are indicated in the comments section of Form FmHA 422-1.

(2) An assignment of all or part of the applicant's share of income is required when title to a livestock or crop enterprise is held by a contractor under a written contract or when the enterprise is to be managed by the applicant under a share lease or share agreement. The contract, share lease or share agreement will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State Supplement) and so forth, in paragraph (1)(b) of the financing statement. A form approved by OGC will be used to obtain the assignment.

(3) An assignment of income can also be taken when the County Supervisior determines it is necessary to protect FmHA's interests.

(i) Form FmHA 443-16, "Assignment of Income from Real Estate Security ," will be used for assignments of real estate security income unless that form is legally inadequate in a particular State, in which case it may be adapted with the approval of the OGC.

(ii) Form FmHA 441-8, "Assignment of Proceeds from the Sale of Products," will be used for products or income in which FmHA does not have a security interest under the UCC. Other forms approved by OGC may be used when this form is not adequate.

(iii) Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FmHA has a security interest under the UCC.

(iv) Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used for products or income, except dairy products, in which FmHA has a security interest under the UCC.

(v) Forms provided by ASCS will be used for assignments of disaster and regular agricultural program payments.

(4) In UCC states, an assignment of income constitutes a security agreement and should be treated accordingly.

§§ 1945.170-1945.172 [Reserved]

§ 1945.173 General provisions—compliance requirements.

(a) *Scope of operation to be financed.* Only family size farming operations may be financed with EM loans, subject to the eligibility requirements, loan amount ceilings, repayment ability, need, available security and other provisions of this subpart.

(b) *Flood or mudslide prone 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). Subpart 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 where 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.

(1) In identified special flood or mudslide hazard areas as designated by FEMA, the following policies are applicable for EM loans being made to finance buildings or fixtures and furnishings contained therein.

(i) If flood or mudslide insurance is available and an applicant has not taken such insurance and has suffered flood or mudslide losses, an EM loan may be made, only if flood or mudslide insurance is purchased before the EM loan is closed.

(ii) If flood or mudslide insurance is available and an applicant previously received and still is indebted for an EM loan, Rural Housing Disaster (RHD), or

SBA disaster loan; and a condition of the loan required the obtaining of flood insurance but the applicant allowed the insurance to lapse; and the applicant had new flood or mudslide losses, the applicant will be considered to be in default on the loan agreement and dealt with accordingly. If it is determined to continue with the borrower and that the EM actual loss loan should be made, flood or mudslide insurance will be obtained before the EM loan is closed.

(iii) If flood or mudslide insurance is available and an applicant had previously received an EM, RHD, or SBA disaster loan; and a condition of the loan required obtaining flood or mudslide insurance and the applicant paid the loan in full and let the insurance lapse; the applicant will be handled in accordance with paragraph (b)(1)(i) of this section.

(iv) In those areas that have been designated by FEMA as special flood or mudslide hazard areas and flood or mudslide insurance is not available or has been withdrawn by FEMA, an applicant can receive an EM loan provided the farm buildings, including the dwelling, are relocated outside the 100-year flood area.

(v) EM loans to repair or replace farm buildings, including dwellings, must meet the requirements of § 1806.25 (a) or (b) of Subpart B of Part 1806 of this chapter (paragraph V, A or B of FmHA Instruction 426.2) as applicable, or be relocated outside the 100-year flood area.

(2) 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, EM loan funds may be used subject to the following:

(i) The Corps of Engineers or the SCS will be consulted concerning:

(A) Likelihood of flooding.

(B) Probability of flood damage.

(C) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(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.

(c) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400–4, "Assurance Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract or more than $10,000.

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 and Subpart G of 1940 of this chapter will apply.

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

(f) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 of this chapter apply when EM funds are used involving tracts of less than 25 acres. If:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(g) *Nondiscrimination requirements.* In accordance with Federal Law, the FmHA will not discriminate against any otherwise qualified applicant on the basis of race, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract), with respect to any aspect of a credit transaction. The policy statement set forth in § 1945.151(a) of this subpart will also apply to credit transactions.

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including its use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Program Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State Supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

§ 1945.174 [Reserved]

§ 1945.175 Options, planning and appraisals.

(a) *Optioning land.* When purchasing real property an applicant is responsible for obtaining options in accordance with the provisions contained in § 1943.25(a) of Subpart A of Part 1943 of this chapter.

(b) *Planning.* (1) Form FmHA 431–2 and Form FmHA 431–4, "Business Analysis—Nonagricultural Enterprise," when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. However, when the EM loan will be for not more than $25,000, Tables A, D, and E of Form FmHA 431–2 may be left blank, and only the totals in Tables G and J should be shown, provided Form FmHA 410–1 is completed and accurately reflects the applicant's current circumstances, and no supervision is planned. The plan *will* show any major items of expenditure and the reason(s) these items are needed. When preparing a plan of operation, it is usually necessary to plan for a capital expenditure reserve during interim years and the typical year. Realistically, this will reflect the depreciating value of machinery, equipment or other essential capital expenditure items, which it is prudent to expect will need to be replaced or require major repair. Also, all recurring and carry-over debts should be considered in a typical year plan. In addition, when all of the loan funds are not to be disbursed at loan closing, a *Monthly Budget* will be prepared showing the specific amount to be disbursed for each associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement system (future advances) or, when determined necessary, through a supervised bank account.

(2) Development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. Also, the provisions of Subpart E of Part 1901 of this chapter will be met in connection with EM loans involving recreational enterprises and the construction of buildings.

(c) *Appraisals.* (1) Real estate appraisals will be completed, on Form FmHA 422–1, or Form FmHA 1922–8, "Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by an FmHA employee authorized to make farm appraisals, when real estate is taken as the primary security for the EM loan. The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922-11, "Appraisal Form for Mineral Rights." Appraisals are not required when:

(i) The amount of the EM loan(s) plus any existing FmHA principal indebtedness is $25,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be taken as security.

(iv) The provisions of paragraph (c)(4) of this section are applicable.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). However, the value of assets that secure EM loans associated with a disaster having any portion of its incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals, all of which must be made a part of the file. These appraisals will show:

(i) The asset value on the day before a State Governor's, Indian Tribal Council's, or an FmHA State Director's first EM designation request, which is associated with the naming of one or more counties in a State as a disaster area where eligible farmers may qualify for EM loans; or

(ii) The asset value one year (365 days) before the date set in paragraph (c)(2)(i) of this section.

(A) The following types of real estate offered as collateral for securing EM loans will be appraised at the present market value only;

(*1*) Farm real estate the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section.

(*2*) Real estate "not owned" by the applicant/borrower (for example, a relative if offering real estate as collateral for the proposed EM loan).

(*3*) A single family dwelling located on a nonfarm tract.

(*4*) Other types of real estate such as apartment houses and commercial buildings. The County Supervisor will request the assistance of the State Director in establishing the value of such real estate.

(B) Sales data utilized in the preparation of the necessary appraisals should conform to the dates set forth in paragraph (c)(2) (i) and (ii) of this section, to ensure a fair market value of the property is established. In addition, it should be confirmed that said sales resulted from reasonable sales efforts and that both the buyer and seller were willing, informed, and knowledgeable parties.

(3) When FLB stock is to be used in establishing the Recommended Market Value (RMV) of the real estate being appraised, see § 1945.169(q)(1) of this subpart.

(4) When real estate is taken as additional security (for loans in which the primary security is subject to rapid depreciation or is of a high risk nature, such as crops), no appraisal report will be required for the additional security, provided the County Supervisor determines the security is adequate, and records the estimated value in the running case record, shows the date the property was inspected and certifies that in his/her opinion the estimates are correct based on knowledge of the value of comparable assets in the area.

(5) Chattel appraisals will be completed on Form FmHA 1945-15, "Value Determination Worksheet," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used as appropriate. The value of assets that secure EM loans associated with a disaster having any portion of the incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals, all of which must be made part of the file. These appraisals will be based on the same information contained in paragraphs (c)(2) (i) and (ii) of this section. Chattels not owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be appraised at the present market value only. Chattels that the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section will be appraised at the present market value only.

(6) Abbreviated appraisals may be used and loans approved when:

(i) The loan approval official determines that the applicant's equity in the collateral will adequately secure the EM loan(s).

(ii) The abbreviated appraisals are prepared as follows:

(A) For real estate—Form FmHA 422-1, "Appraisal Report-Farm Tract," complete the heading of the report; Part 1, item A; Part 2; Part 3; Part 6; Part 7 and Part 8. The report will be signed and dated by an FmHA authorized appraiser.

(B) for chattel property—Form FmHA 1945-15 will list, identify and show the value of each chattel item. This form will be completed, as applicable, on all EM loans.

§ 1945.176-1945.179 [Reserved].

§ 1945.180 County Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440-2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations.

(a) *Certification.* If the County Committee finds the applicant eligible, it will prepare Form FmHA 440-2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. The County Committee will comply with Subpart A of Part 1910 of this chapter.

(b) *Rejection.* If the County Committee determines the applicant ineligible the County Supervisor will inform the applicant in writing of the reasons for ineligibility. Reasons for unfavorable action will be given in the space provided on Form FmHA 440-2 above the space for signatures. The County Committee will comply with Subpart A of Part 1910 of this chapter. Also, the County Supervisor will complete Part III of Form(s) FmHA 1945-29 to show the rejection of the application, sign, date and forward to the appropriate ASCS county office in accordance with the FMI.

§ 1945.181 [Reserved].

§ 1945.182 Loan docket preparation.

(a) *Processing guide.* See Exhibit A of this subpart for Insured Emergency Loan Processing Guide. When a packager has developed the loan docket the County Supervisor will fully analyze the docket to assure it is complete and conforms with this EM loan regulation. The County Supervisor will reverify calculations in accordance with § 1945.183(a) and insure that the provisions of § 1945.183 of this subpart are met before final action is taken on the loan request.

(b) *Form FmHA 1940-1, "Request for Obligation of Funds".* A separate Form FmHA 1940-1 will be prepared for each EM loan which has a different interest rate and/or a different repayment period, as determined in accordance with § 1945.168 (a) and (b) of this subpart. Also, on Form FmHA 1940-1, for EM loans approved for borrowers presently indebted for an EM loan, but having new qualifying losses from a subsequent authorized disaster, the new appropriate disaster authorization number will be shown.

(c) *Promissory note.* A separate promissory note will be prepared for each Form FmHA 1940-1 used in approving and obligating each of the EM loans.

(d) *Lease agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement, which are not clearly reflected in Form FmHA 431-2, will be prepared and made a part of the loan docket.

§ 1945.183 Loan approval or disapproval.

(a) *Reverification before approval.* Before an EM loan is approved the following actions must be taken:

(1) A County Office employee will verify information provided by ASCS on all Forms FmHA 1945-29 in accordance with the FMI. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(2) A County Office employee will verify information provided by the Federal Crop Insurance Corporation (FCIC) regarding any insurance benefits which have been paid or will be paid. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(3) All calculations on Form FmHA 1945-22 and Form FmHA 1945-26 will be checked by a County Office clerical employee (either regular or temporary), using a calculator with a paper tape, to assure that mathematical errors are detected. The County Supervisor or designee will make any corrections necessary in the loan docket, when errors are located. The paper tape will be attached to Form FmHA 1945-26 or Form FmHA 1946-26 as appropriate.

(4) To prevent the duplication of benefits, FmHA and SBA have agreed to coordinate their respective EM and disaster loan program activities as follows; pursuant to the Memorandums of Understanding between FmHA and SBA, Exhibits B and B-1 of this subpart:

(i) The FmHA County Offices will notify the appropriate SBA Disaster Area Office of all EM loan applications received each day, including those received for loss of household contents.

(ii) FmHA County Offices will send a copy of each action taken with EM loan applicants to the appropriate SBA Disaster Area Office. Those actions include: The letter confirming county committee eligibility determination; loan approval, Form FmHA 1940-1; notification of application withdrawal; notification of loan denial; confirmation of request for reconsideration or appeal of loan denial; and final determination on an appeal. Copies of all written communications from FmHA County Offices to the SBA Area Offices will be sent to the State Director, Attention: Chief, Farmer Program; and the District Director.

(iii) Applicants who receive SBA loans may file for FmHA EM loans. In those cases, FmHA will either (A) reject the application, (B) reduce the FmHA EM loan by the amount of the SBA loan, which may require SBA to subordinate its lien position(s), or (C) refinance the SBA loan by using EM loan funds to pay SBA directly. An EM loan will not be approved until it is determined that the requirements of § 1945.163(d) of this subpart will be met. If an EM is approved, the FmHA County Office will notify the SBA Disaster Area Office pursuant to paragraph (a)(4)(ii) of this section.

(b) *Administrative determination and responsibilities.* When the County Committee certification has been made and the reverification has been completed, and before approving the loan, the loan approval official will determine administratively whether:

(1) The County Committee has certified that the applicant is eligible, likely to be successful in the proposed operations, and likely to achieve the objectives of the EM loan.

(2) The applicant has satisfactory tenure arrangements on the farm(s) to be operated.

(3) The proposed farm and home operations of the applicant are reasonably sound.

(4) The loan(s) being processed is proper and can be repaid from projected farm and/or nonfarm income as scheduled, and that in the planned typical year the farming operation will be self sustaining.

(5) The security requirements can be met.

(6) The certification(s) required of the applicant and the County Committee have been made and are a part of the loan docket.

(7) The proposed changes to be financed with the EM loan(s) are needed, and that the county office case file reflects the need for those changes.

(8) The loan meets all other FmHA requirements.

(c) *Loan docket transmittal to the Administrator.* (1) Transmittal memoranda accompanying EM loan dockets requiring National Office advice must set forth, as a minimum, the following information:

(i) Proposed loan(s), amount(s), rate(s) of interest, and term(s) of each loan.

(ii) Outstanding FmHA loan(s) balance(s) and the total proposed EM loan(s) indebtedness.

(iii) Status of outstanding FmHA loan(s).

(iv) Brief statements regarding:

(A) Cause and type of disaster losses.

(B) Inability to obtain other suitable credit.

(C) Purposes for which loan funds are to be used.

(D) Overall feasibility and soundness of the planned operation.

(E) Property offered as security for the loan(s).

(v) The State Director's specific positive recommendation that the requested actions be approved.

(2) Loan dockets should not be forwarded to the National Office for approval of any action unless the State Director is able to make a positive recommendation.

(3) Memoranda transmitting problem cases, on which State Directors are only seeking National Office counsel, should also contain their thinking, their interpretation of the appropriate FmHA regulations and policies, and their recommendations on how they believe the case in question should be handled.

(d) *Loan approval.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter.

(2) The loan approval official will date, sign and distribute Form FmHA 1940-1 in accordance with the FMI and set forth any special conditions of approval, including any special security requirements, in the appropriate section on Form FmHA 1940-1.

(3) The County Supervisor will complete Part III of Form FmHA 1945-29 and forward the form to the appropriate ASCS county office(s).

(e) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter.

(1) If a loan is disapproved, the loan approval official will indicate the reasons for the rejection in the running case record and on Form FmHA 1940-1. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor or loan approval official will notify the applicant by letter of the reason(s) for rejection and will advise the applicant in that letter of appeal rights as set out in Subpart B of Part 1900 of this chapter.

The letter will also include any suggestions that could result in favorable action.

(3) The County Supervisor will complete Part III of Form FmHA 1945–29 and forward the form to the appropriate ASCS county office.

(4) In areas where EM loans are being made under a *major disaster declaration,* and where the FEMA has advised the State Director that Section 408 grants are available, a list of applicants with physical losses, who do not qualify for EM loans, will be prepared and sent to the FEMA by County Supervisors at the close of business each week. Those applicants who are not eligible for an EM loan because they are not farmers as defined in § 1945.154 of this subpart will be screened and referred to the SBA for disaster loan assistance. The State Director will be advised by the FEMA where to send the list and the State Director will so advise the County Supervisors. The list will be prepared in the following format:

United States Department of Agriculture

Farmers Home Administration

To: ______

______

The following is a list of applicants not qualifying for Farmers Home Administration's Emergency loans in ______ County during the week ending ______, 19___.

Name ______

Address ______

______

County Supervisor

§ 1945.184 [Reserved]

§ 1945.185 Actions after loan approval.

Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and obligation will be cancelled, the County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned to the Finance Office with an original and one copy of Form FmHA 1940–10 (see FmHA Instruction 102.1, a copy of which is available in any FmHA office).

(b) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940–10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(c) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan before closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can be readily completed and submitted. In the latter case, a memorandum to that effect will be attached to the revised forms for referral to the Finance Office.

§ 1945.186—1945.187 [Reserved]

§ 1945.188 Chattel lien search.

See § 1941.63 of Subpart B of Part 1941 of this chapter for regulations concerning lien searches covering chattels.

§ 1945.189 Loan closing.

(a) *Closing loans secured by real estate.*—(1) *General.* Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA instruction 427.1).

(2) *Security instruments.* Security instruments referred to in paragraph (a) of this section are real estate mortgages or deeds of trust.

(i) FmHA real estate mortgage or deed of trust Form FmHA 427–1 (State), "Real Estate Mortgage for ______," will be used in all cases where real estate is taken as security.

(ii) Promissory note(s) will be prepared and completed at the time of loan closing in accordance with the FMI. If insured Rural Housing (RH) funds are advanced simultaneously with EM funds the RH loan will be evidenced by a separate note on the proper form as provided in Subpart A of Part 1944 of this chapter. However, all notes will be described on the same security instrument(s). When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing.

(iii) When subsequent loans are made, a new security instrument is required only when the existing instruments do not cover all required security or do not secure the subsequent loan.

(iv) A subsequent loan for any authorized purpose may be made without taking new security instruments when the existing security instruments cover all the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the subsequent loan as for the initial loan. A new security instrument will be taken if any one of these requirements is not met.

(3) *Leaseholds.* Security instruments for loans secured by leaseholds will describe security in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), and the following provisions will also apply:

(i) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

All Borrower's rights, title, and interest in and to the leasehold estate for a term of ___ years beginning on ______, 19___, created and established by a certain lease dated ______, 19___, executed by ______, as lessor(s), recorded on ______, 19___, in Book ______, page ___ of the ______ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(ii) An additional covenant will be inserted in the mortgage to read as follows:

Borrowers will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(iii) A copy of the lease will be made part of the loan docket.

(4) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(i) When the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. When the original is retained by the recording official, a conformed copy, showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder. A conformed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder, or if it is required by a working agreement provision with that lienholder.

(ii) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(5) *Abstracts of Title.* Any abstract of title will be delivered to the borrower and Form FmHA 140-4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), if this has not already been done.

(7) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA employees accept cash for these purposes Form FmHA 440-12, "Acknowledgement of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is only for paying fees on behalf of the borrower, and is not accepted as partial payment on a loan.

(8) *Supervised bank accounts.* If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter. Loan funds not to be disbursed for specific purposes at loan closing and not needed within 30 days after closing, will not be requested until they are needed. The "Loan Disbursement System" will be used to request future advances at 30 day intervals or as needed. Only in unusual cases will loan funds be kept in supervised bank accounts for more than 60 days. When such funds are placed in an interest bearing supervised bank account, the interest earned will be applied on the EM loan immediately or used for an authorized EM loan purpose, if the planned EM funds are not sufficient to cover all of the planned items.

(b) *Closing loans secured by chattels and crops.* See Subpart B of Part 1941 of this chapter.

(c) *Loan closing review.* Immediately prior to loan closing, the FmHA official responsible for closing the loan(s) will review the file for compliance with Agency regulations.

§ 1945.190 Revision of the use of EM loan funds.

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds were planned to be used, provided:

(1) The loan, as changed, is within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect either the feasibility of the operation or the Government's interest.

(4) Such a change is approved in advance of the loan funds being used for the new purpose(s).

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State Supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to the repayment will be made in Table K of Form FmHA 431-2 (and, if needed, on Form FmHA 1962-1) and will be initialed by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA 1905-1, "Management System Card—Individual."

§ 1945.191 [Reserved]

§ 1945.192 Loan servicing.

Loans will be serviced under Subpart A of Part 1962 and Subpart A of Part 1965 of this Chapter.

§ 1945.193—1945.199 [Reserved]

§ 1945.200 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0090.

67. Exhibit A of Subpart D of Part 1945 is revised to read as follows:

Exhibit A to Subpart D—Processing Guide—Insured Emergency (EM) Loans

I. Purpose

This Exhibit outlines the basic steps involved in processing a loan application including an application kit, and identifies the FmHA forms which should be considered for use at each step as appropriate for EM loans.

II. General

A. The forms listed in this Exhibit will be considered in development of the application. Forms designated with an "X" are required and those designated with a "*" are used when applicable.

B. Consult the appropriate Forms Manual Insert (FMI) for instructions for completion, distribution, and procedural reference for each form.

III. Application Processing

A. Application Filing. The following should be done at the time the applicants file their applications.

1. County Office Assistants (COA) normally will have the first contact with potential applicants. During these contacts the COA should:

a. Be sympathetic and sensitive to applicant's needs.

b. Set up appointments for applicants to meet with supervisory personnel.

c. Inform applicants of the last date for receiving applications.

d. Discuss credit needs and FmHA's services.

e. Advise applicants eligible for other credit that they are not eligible for an EM loan and advise applicants appearing eligible for other credit who certified they are unable to get other credit, that they will be referred to other lenders to obtain written evidence they are unable to obtain their needed credit from such other lenders.

f. Begin running case record.

g. Provide applicants with an application kit and any other instructions that are needed to help expedite processing of the application and FmHA forms to be completed.

2. The application kit should have a cover sheet with instructions to the applicant, as is appropriate for individuals, corporations, cooperatives, joint operations and partnerships. The cover sheet will include a notice to the applicant that the completed application must be returned by the termination date shown on the cover sheet in order to be accepted and considered for EM loan assistance. The following FmHA Forms should be included in the kit: 410-1, 410-9, "Statement Required by the Privacy Act," 431-1, "Long Time Farm and Home Plan," 431-2, and 1945-22.

3. The County Office Assistant (COA) will set up a list of names and addresses for all recipients of EM applications given out. This list will be monitored daily or weekly and if an applicant does not keep a scheduled appointment, follow up will be accomplished with a letter or telephone call and recorded in the county case file.

4. Applicants will be promptly notified in writing of their eligibility status, and if

additional information is needed to make an eligibility determination, it will be requested in writing.

5. The following FmHA Forms will be used as appropriate:

Form No.	Name	Use
410-1	Application for FmHA Services	X
1910-5	Request for Verification of Employment.	*
410-7	Notification to Applicant on Use of Financial Information from Financial Institution.	X
410-8	Applicant Reference Letter	*
410-9	Statement Required by the Privacy Act.	*
410-10	Privacy Act Statement to References.	X
431-1	Long-Time Farm and Home Plan	*
431-2	Farm and Home Plan	X
431-4	Business Analysis—Nonagricultural Enterprise.	*
440-32	Request for Statement of Debts and Collateral.	*
440-34	Option to Purchase Real Property	*
440-58	Estimate of Settlement Costs "Settlement Costs" Booklet.	*
443-2	Option for Purchase of Farm—Land to be Subdivided.	*
443-3	Assignment of Interest in Option (Land to be Subdivided).	*
1924-14	Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities.	*
1940-38	Request for Lender's Verification of Loan Application.	*
1940-51	Crop-Share-Cash Farm Lease	*
1940-53	Cash Farm Lease	*
1940-55	Livestock-Share Farm Lease	*
1940-56	Annual Supplement to Farm Lease	*
1945-20	Applicant's Environmental Impact Evaluation.	*
1945-22	Certification of Disaster Losses	X
1945-29	ASCS Verification of Farm Acreages, Production and Benefits.	*

B. Field Visit. Notify applicant of planned visit and its purpose.

1. Verification of disaster losses.

2. Evaluate the resources available to the applicant and their adequacy in fulfilling the requirements of the proposed plan of operation, taking into consideration development work planned.

3. Obtain information needed to complete required appraisals (chattel and real estate).

4. If development is planned, discuss plans, specifications, and estimates.

5. Hold landlord-tenant meeting, if necessary, to reach an agreement on the terms of the lease, resolve any problems, etc.; record in running case record.

6. Determine security requirements and record in running case record.

7. The following FmHA forms will be used as appropriate.

Form No.	Name	Use
422-1	Appraisal Report—Farm Tract	*
422-2	Supplemental Report—Irrigation, Drainage, Levee and Minerals.	*
422-3	Map of Property	*
422-10	Appraiser's Worksheet—Farm Tracts for Study of Comparable Properties.	*
424-1	Development Plan	*
424-2	Description of Materials	*
440-13	Report of Lien Search	*
440-21	Appraisal of Chattel Property	*
1945-15	Value Determination Worksheet	*
1922-11	Appraisal Form for Mineral Rights	*
1922-8	Residential Appraisal Report	*
1945-26	Calculation of Actual Losses	X

C. Eligibility Determination.

1. Obtain all needed application forms and other information from the applicant. Assist the applicant in completing these forms and/or in obtaining needed information, as necessary.

2. Request deed or other evidence of title.

3. Schedule meeting for Community Committee, review application and determine eligibility.

4. Inform applicant of the results of Committee action.

5. The following FmHA forms will be used as appropriate:

Form No.	Name	Use
403-1	Debt Adjustment Agreement	*
440-2	County Committee Certification or Recommendation.	X

IV. Docket Preparation

A. Obtain all information from the applicant, prior lienholder(s), landlord(s), etc., needed for the loan docket to be prepared.

B. Check to assure all security requirements have been or will be met by loan closing.

C. Prepare a loan narrative and enter it into the running case record.

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).	*
440-6	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 of 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	X

V. Loan Approval and Closing

A. Loan Approval.

1. Establish loan closing conditions and enter them in the running case record.

2. Execute and distribute all forms necessary for loan approval.

3. For chattel loan—file financing statement or chattel mortgage, and obtained a lien search.

4. For real estate loan—request preliminary title opinion.

B. Loan Closing.

1. Arrange for loan closing by escrow agent, designated attorney, or other authorized loan closing agent; furnish loan closing agent with appropriate instructions, forms, and other needed information for loan closing.

2. The following FmHA forms will be provided to and used by the appropriate loan closing agent, in addition to those forms listed under docket preparation which must be executed by the borrower or other party:

Form No.	Name	Use
140-4	Transmittal of Documents	*
400-1	Equal Opportunity Agreement	*
400-3	Notice to Contractors and Applicants.	*
400-6	Compliance Statement	*
402-1	Deposit Agreement	*
402-2	Statement of Deposits and Withdrawals.	*
402-5	Deposit Agreement (Non FmHA Funds).	
426-2	Property Insurance Mortgage Clause (Without Contribution).	*
427-1	Real Estate Mortgage or Deed of Trust for.	*
427-4	Transmittal of Title Information	*
427-5	Affidavit of Borrowers (or Transferees).	*
427-6	Affidavit of Sellers (or Transferors)	*
427-9	Preliminary Title Opinion	*
427-10	Final Title Opinion	*
427-11	Warranty Deed	*
440-45	Nondiscrimination Certificate (Individual Housing).	*
440-59	Settlement Statement	*
1924-14	Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities.	X
1940-17	Promissory Note	X
1965-22	Information on Assumption on New Terms or Other Change of Terms.	*
1965-23	Supplemental Information on Assumption and/or Change of Terms.	*

68. Exhibit D of Subpart D of Part 1945 is amended by revising the introductory text of paragraph IV., the introductory text of paragraph VIII., and paragraph IX. B. to read as follows:

Exhibit D—Emergency Loans for Citrus Grove Rehabilitation and/or Reestablishment

* * * * *

IV. Eligibility

Sections 1945.163 and 1945.175 of this subpart are supplemented to the extent that EM loan may be made, under the provisions of this Exhibit, only to otherwise eligible applicants who are owner-operators of citrus groves. To be eligible, applicants must:

* * * * *

VIII. Rates and Terms

See § 1945.155(a) and FmHA Instruction 440.1, Exhibit B, (available in any FmHA office). Section 1945.168 of this subpart is hereby modified, authorizing future advances of EM loans funds to be disbursed over a period of up to 5 years, when such loan funds are used to rehabilitate and/or reestablish a citrus grove(s). EM loans may have reduced annual installments scheduled, of at least partial interest, for up to 5 years. However, such reduced installments will not be scheduled longer than the amount of time projected as being needed to bring the citrus grove(s) back into profitable production. After the adjustment period, the promissory note may describe a graduated schedule of annual installments to coincide with projected increasing cash flow. A State Supplement will be issued setting forth several examples of a 5-year adjustment period showing scheduled annual installments.

* * * * *

IX. * * *

B. The best lien obtainable on real estate on which the citrus is to be grown, having sufficient collateral equity to fully secure the EM loan, based on the per acre appraised value of the citrus grove(s) as established on the day before the disaster occurred, or one year and one day before the disaster designation was requested by a State Governor or an FmHA State Director, whichever date has the higher value;

* * * * *

PART 1951—SERVICING AND COLLECTIONS

69. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; U.S.C. 1980; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Accounting Servicing Policies

70. Section 1951.44 is amended by revising paragraphs (a)(3) and (b)(1)(ii)(A) to read as follows:

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.

* * * * *

(a) * * *

(3) Unduly impaired standard of living: A condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(b) * * *

(1) * * *

(ii) * * *

(A) Accident, death, illness or injury to an individual borrower or dependent member of the borrower's family (stockholders, members, partners, or joint operators of an entity borrower are excluded, except when that stockholder, member, partner, or joint operator is the manager of the farming operation); or

* * * * *

PART 1955—PROPERTY MANAGEMENT

71. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

72. Section 1955.18 is amended by revising paragraph (a) to read as follows:

§ 1955.18 Actions required after acquisition of property.

(a) *Reporting acquisition.* When real or chattel property is acquired by the Government, the servicing official will prepare and distribute Form FmHA 1955-3, "Advice of Property Acquired," or Form FmHA 1965-19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired," according to the FMI immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. The date of acquisition will be the date the deed to the Government is recorded for a voluntary conveyance; the date of the foreclosure sale; or for chattels, the date the bill of sale (and title, if applicable) is executed transferring ownership to FmHA. Form FmHA 1955-3 or Form FmHA 1965-19 will be submitted promptly without waiting for the final report on sale from OGC where required. The State Director will assign an advice number to the property and complete distribution according to the FMI. For MFH loans, the State Director will forward a copy of Form FmHA 1965-19 to the National Office for monitoring purposes. For MFH projects with rental assistance, Form FmHA 1944-55, "Multiple Family Housing Transfer of Rental Assistance," must be attached to Form 1965-19 indicating the status of the rental assistance while the property is in inventory. The County Supervisor will report the acquisition of farm property to the local Agricultural Stabilization and Conservation Service (ASCS) office by memorandum so that any allotments, marketing quotas or acreage bases established for the property will not lapse, terminate, be reduced or otherwise be adversely affected while the property is in inventory. The State Director will report any adverse effects on allotments, marketing quotas or acreage based on any farm inventory property to the Administrator.

* * * * *

Subpart B—Management of Property

73. Section 1955.63 is amended by redesignating paragraph (b) as (c) and paragraph (c) as (d) respectively and adding a new paragraph (b) to read as follows:

§ 1955.63 Suitability determination.

* * * * *

(b) *Grouping and subdividing surplus farm properties.* The State Director will subdivide surplus property whenever possible into parcels for the purpose of creating one or more suitable farm properties. The State Director may also group two or more individuals' surplus properties into one or more suitable farm properties. The environmental effects will be considered pursuant to Subpart G of Part 1940 of this chapter. Also refer to § 1955.140 of Subpart C of this part. The State Director, with prior approval of OGC, may issue a State Supplement addressing any applicable State laws.

* * * * *

74. Section 1955.64 is amended by revising paragraph (a)(3) to read as follows:

§ 1955.64 Securing, maintaining, and repairing inventory property.

* * * * *

(a) * * *

(3) *Farm property.* Only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place in saleable condition. Conservation of soil, water, and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS). The County Supervisor will request that the SCS prepare a conservation plan for the property, identify within the plan the location of any highly erodible land and recommend specific conservation practices for such land. The County Supervisor will carry out those practices in the SCS plan that are essential to preserve and protect the property and to place it in saleable condition. Chattel property will be managed as outlined in § 1955.80 of this subpart.

* * * * *

75. Section 1955.65 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 1955.65 Management of inventory and/or custodial real property.

* * * * *

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure an individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection of repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties, and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property is to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with § 1955.66 (e) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) * * *

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," subject to FmHA's approval. Contracts for management of farm inventory property wil be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in Exhibit J, paragraph II C, "Procurement Preference Program," of FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

76. Section 1955.66 is amended by revising paragraphs (a)(2)(iii) and (b) and redesignating paragraph s (c) to (d), (d) to (e), (e) to (g), (f) to (i), (g) to (j), (h) to (k), (i) to (1) and (j) to (m), adding new paragraphs (c), (f) and (h) and revising newly designated paragraph (g) to read as follows:

§ 1955.66 Lease of Real Property.

* * * * *

(a) * * *

(2) * * *

(iii) *Farm Property.* Any CONACT property with a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by one who was personally liable for a Farmer Program loan must be considered for dwelling retention under § 1955.73 of this subpart prior to lease under this section. The County Supervisor may approve the lease of farm property. When a lease with an option to purchase is signed, the lesses should be told that FmHA cannot make a committment to finance the purchase of the property in the future. Except for leases with an option to purchase, special stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops and rental payment will be prorated between the Government and the purchaser of the property. The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service ASCS) office and all subsequent changes in leases or sale of the property. Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to impact on the environment, preservation of land for agricultural purposes as required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property. The Administrator may issue directives (available in any affected FmHA office) restricting the leasing of property which could be used to produce agricultural products determined to be in surplus supply. Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

* * * * *

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as an eligible applicant for purchase of the property (if property is suitable for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Selection of lessees for farm property.*—(1) *Farm plans.* All prospective lessees will be required to submit a farm plan for the upcoming crop year and to submit evidence of their income. The County Supervisor must determine that the terms of the lease can be fulfilled. The County Supervisor may require verification of income and/or a credit report (to be paid for by the prospective lessee).

(2) *Leasing priority.* Farm property will be leased in the following order of priority:

(i) The previous owner or operator of the property will be given the first opportunity to lease, with or without an option to purchase. The County Supervisor will notify the previous owner or operator, by certified letter, return receipt requested, of the availability of the property for lease as soon as it becomes avaialble for lease. The previous owner or operator will be given thirty days to contact the county office if interested in leasing, with or without an option to purchase. The County Supervisor must determine that the previous owner or operator has sufficient experience, management skills and financial resources to assure a reasonable prospect of success in the farming operation. In making this determination, the County Supervisor will evaluate the previous owner's or operator's financial and production records and determine whether or not the failure of the previous operation was caused by factors beyond the previous owner's or operator's control such as natural disasters, inflated farm prices, high interest rates and prices received that were below reasonable costs of production. If this determination is adverse to the previous owner or operator, the County Supervisor will notify, in writing, the previous owner or operator of the decision and will give the previous owner or operator the opportunity to appeal the determination in accordance with Subpart B of Part 1900 of this chapter. No lease will be signed with any prospective lessee until this appeal is concluded. If the appeal is concluded in FmHA's favor, the provisions of (h) of this section on advertising will be followed:

(ii) If the previous owner or operator is not interested in leasing the property, the County Supervisor will give performance to operators (as of the time immediately before a lease is entered into) of not larger than family-size farms who want to lease *with* an option to purchase. The County Supervisor must determine which of these prospective lessees can fulfill the terms of the lease, as required by paragraph (c)(1) of this section. If there is more than one prospective lessee in this category, the County Committee will select, by majority vote, the operator who has the best chance for success in operating the farm and exercising the option to purchase.

(iii) If the previous owner or opertor is not interested in leasing the property and no operator described in paragraph (c)(2)(ii) of this section wants to lease the property, the County Supervisor will give preference to operators (as to the time immediately before a lease is entered into) of not larger than family-size farms who want to lease *without* an option to purchase. The County Supervisor must determine which of these prospective lessees can fulfill the terms of the lease, as required by paragraph (c)(1) of this section. If there is more than one prospective lessee in this category, the County Supervisor will select the lessesse who made the first acceptable offer to lease the property.

(iv) If not prospective applicants fall into the categories in paragraphs (c)(2)(i), (ii), or (iii) of this section, the County Supervisor will select the lessee who can fulfill the terms of the lease, as required by paragraph (c)(1) of this section, and who made the first offer, which was in accordance with the conditions of the advertisement, to lease the property.

* * * * *

(f) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the leases, conservation practices specified by the SCS and approved by the FmHA.

(g) *Lease with option to purchase.* For inventory property *only,* a lessee may be given the option to purchase. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955-20. The purchase price (option price) will be the market value except for farm property. The purchase price (option price) for all farm property to be leased with option to purchase to eligible farm applicants will reflect the average annual income that may be reasonably anticipated to be generated from farming such property. Therefore, the option price will be the capitalization value of the farm as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The capitalization value will be supported by a current appraisal on Form FmHA 422-1, "Appraisal Report-Farm Tract." A lease with option to purchase farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price.

(h) *Advertising farm property for lease.* Advertisement is not required when an existing lease will be renewed or renegotiated with the present lessee or when the previous owner or operator request to lease as outlined in paragraph (c)(2)(i) of this section. Otherwise, to assure fair and equitable treatment to all interested parties, public notice will be given of the availability of each inventory property for lease. Public notice means, as a minimum, advertisement in a newspaper or periodical that has a major circulation in the area where the inventory property is located. The public notice shall include as a minimum:

(1) All of the applicable qualifications, terms, conditions, restrictions, and stipulations associated with the lease, and how and when a lessee will be selected;

(2) A description of the property including its location and the presence of any natural hazards such as floodplains, wetlands and special mudslide hazard areas;

(3) The closing date and time for receiving written offers to lease;

(4) The terms of the lease;

(5) A statement that the Government reserves the right to reject all offers to lease;

(6) A statement that the property will be leased without regard to race, color, religion, sex, age, national origin or marital status.

* * * * *

Subpart C—Disposal of Inventory Property

77. Section 1955.103 is amended by revising paragraph (n) to read as follows:

§ 1955.103 Definitions

* * * * *

(n) *Regular FmHA sale.* Sale made by other than sealed bid, auction or negotiation by FmHA employees or real estate brokers. Except for farm property, regular FmHA sales are made at market value unless the price is administratively reduced. Farm property will be sold for a price that reflects the average income that may be reasonably anticipated to be generated from farming such property. Therefore, the price will be the capitalization value as determined by an appraisal made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

* * * * *

78. Section 1955.106 is amended by revising the introductory text, and paragraphs (a) and (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) and by revising newly designated paragraph (e)(1), by redesignating newly designated (e)(2) through (e)(5) as (e)(3) through (e)(6) respectively, and adding new (e)(2) to read as follows:

§ 1955.106 Sale of suitable property (CONACT)

Except as provided in § 1955.109 of this subpart for farm property, CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to eligible applicants in accordance with FmHA regulations that apply to the appropriate loan program. Real property will be managed in accordance with provisions of Subpart B of this part until sold under this section or reclassified as surplus and sold under § 1955.107 of this subpart.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955-40, "Notice of Real Property for Sale," as posted is the date the property is offered for sale. As a minimum, farm property will be advertised for sale in at least one newspaper that is widely circulated in the county in which the farm is located and either Form FmHA 1955-40 or the "Notice of Sale," Form FmHA 1955-41, will be posted in a prominent place in the County Office. If an eligible applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria.

* * * * *

(c) *Price.* Except for farm property, property will be offered or listed for its market value, based on the condition of the property at the time it is made available for sale. Farm property will be sold for a price that reflects that average income that may be reasonably anticipated to be generated from farming such property. Therefore, the price will be the capitalization value as determined by an appraisal made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(d) *Selection of purchaser.* (1) Except for farm property, when more than one acceptable offer is received during business hours on the same day, the order in which they will be considered will be decided by lot. If otherwise acceptable, the contract should be signed and accepted subject to approval of credit. "Back-up" offers will be retained in case the first offer processed cannot be closed.

(2) If two or more eligible operators of not larger than family-size farms wish to purchase a suitable farm, the County Committee will select the operator who in their opinion has the best chance for success based upon an evaluation of their past farm records and proposed farm plans. This operator's offer will be accepted. The reasons explaining the County Committee's selection of the best qualified applicant will be fully documented on Form FmHA 440-2, "County Committee Certification or Recommendation." Some of the factors the committee will consider include but are not limited to:

(i) *Liquidity.* Consider working capital, each flow, the ratios of current assets to current liabilities and current liabilities to total liabilities.

(ii) *Solvency.* Consider net worth and the ratio of total liabilities to net worth.

(iii) *Profitability.* Consider net farm income and the ratio of net farm income to net worth.

(iv) *Efficiency.* Consider the ratios of cash operating expenses to gross receipts and debt repayment to gross receipts.

(e) * * *

(1) Form FmHA 1955-45, "Standard Sales Contract-Sale of Real Property By the United States," will be used to document the offer and acceptance for regular FmHA sales.

(2) The County Committee will certify to the applicant's eligibility on Form FmHA 440-2, in accordance with program eligibility requirements when required by the FmHA regulation that applies to the appropriate loan program.

* * * * *

79. Section 1955.107 is amended by revising paragraph (b) to read as follows:

§ 1955.107 Sale of surplus property (CONACT).

* * * * *

(b) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. The State Director will determine the method of sale, the minimum acceptable sale price and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. The minimum acceptable sales price established for farm property may not be more than the capitalization value as determined by an appraisal made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). For sealed bid sales, preference will be given to a cash offer which is at least *——— percent of the highest offer requiring credit. [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] Equally acceptable sealed bid offers will be decided by lot, except for the sale of farm property, where an acceptable sealed bid from an operator of not larger than a family farm will be given preference. If two or more operators of not larger than family-size farms wish to purchase a farm property, the County Committee will select the operator who in their opinion has the best chance for success based upon an evaluation of their past farm records and proposed farm plans. This operator's bid will be accepted. The reasons explaining the County Committee's selection of the best qualified applicant will be fully documented on Form FmHA 440-2. Some of the factors the committee will consider include but are not limited to:

(1) *Liquidity.* Consider working capital, cash flow, the ratios of current assests to current liabilities and current liabilities to total liabilities.

(2) *Solvency.* Consider net worth and the ratio of total liabilities to net worth.

(3) *Profitablility.* Consider the net farm income and the ratio of net farm income to net worth.

(4) *Efficiency.* Consider the ratios of cash operating expenses to gross receipts and debt repayment to gross receipts.

* * * * *

80. Section 1955.108 is amended by revising paragraph (a) to read as follows:

§ 1955.108 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA: 431-2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability. For organization property, information will be provided which is similar to an application including financial information required for the respective loan program.

* * * * *

81. Section 1955.109 is added to read as follows:

§ 1955.109 Disposition of farm property.

(a) *Effects of farm property on farm values.* State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this part until such time that a subsequent analysis indicates otherwise. The State Director will notify in writing the County Supervisor(s) servicing those areas that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

(1) The number of farms and acres that FmHA expects to acquire in inventory.

(2) The number of farms and acres other lenders expect to acquire in inventory

(3) The number of farms and acres that FmHA currently has in inventory.

(4) The number of farms and acres other lenders currently have in inventory.

(5) The number of farms not included in paragraphs (a)(3) and (a)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(b) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must continue, as requirements of the leases, conservation practices specified by the SCS and approved by the FmHA as a condition for sale. Refer to § 1955.137(c) of this subpart for implementation requirements.

(c) *Disposition of farm property available for sale.* Unless withheld from sale as required by § 1955.109(a) of this section, farm property will be disposed of in the following order of priority:

(1) The previous owner or operator of the property will be given the first opportunity to purchase. The County Supervisor will notify the previous owner or operator, by certified letter, return receipt requested, of the availability of the property for sale as soon as it becomes available for sale. The previous owner or operator will be given thirty days to contact the County Office if interested in purchasing the farm. The purchase price will be as determined in § 1955.106(c) of this subpart. The property will be offered on eligible terms (if the previous owner or operator is eligible) and a credit sale processed in accordance with § 1955.106(d), or for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(2) If the previous owner or operator of the property is not interested in purchasing the property, the previous owner or operator will be given the opportunity to lease, with or without an option to purchase, in accordance with § 1955.66(c)(2)(i) of Subpart B of this part.

(3) If the previous owner or operator of the property is not interested in purchasing or leasing the property, the property will be sold in accordance with §§ 1955.106 or 1955.107 of this subpart, as applicable.

82. Section 1955.137 is amended by adding paragraph (c) to read as follows:

§ 1955.137 Real property located in special areas or having special characteristics.

* * * * *

(c) *Highly erodible farmland.* (1) The County Supervisor will determine if any farmland inventory property contains highly erodible land as defined by the SCS and, if so, what specific conservation practices will be made a condition of a sale of the property. This should be done by reviewing the conservation plan prepared for the inventory property. See § 1955.64(a)(3) of Subpart B of this part. If this review determines that sufficient information does not exist on the location(s) of highly erodible land or recommended conservation practices, the SCS shall be contacted and requested to provide the necessary information.

(2) If the County Supervisor does not concur in the need for a conservation practice(s) recommended by SCS, any differences shall be discussed with the recommending SCS office. Failure to reach an agreement at the level shall require the State Director to make a final decision after consultation with the SCS State Conservationist.

(3) Whenever SCS technical assistance is requested in implementing these requirements and SCS responds that it cannot provide such assistance within a timeframe compatible with the proposed sale, the County Supervisor will determine if the sale arrangements should go forward or be delayed. If the property either is known to contain highly erodible land or there is visible evidence of erosion problems, a sale of the property will be delayed until SCS can respond. Otherwise, the sale may proceed, conditioned on the requirement that a purchaser will immediately contact SCS and have a conservation plan developed. The County Supervisor will monitor the borrower's compliance with the recommendations in the conservation plan. If problems occur in obtaining SCS assistance, the State Director should consult with the SCS State Conservationist. The potential for response to problems arising can be diminished by ensuring that all farmland in inventory has a conservation plan developed in accordance with § 1955.64(a)(3) of Subpart B of this part and that SCA assistance is requested immediately after acquiring title.

(4) The steps taken and results achieved in order to comply with the provisions of this paragraph shall be documented in the environmental review conducted for the proposed sale. All prospective purchasers must be made aware at the time of first inquiry of the conservation practices to be required. Therefore, the environmental review must be completed as soon as possible after acquiring title to the property.

83. Section 1955.139 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 1955.139 Disposition of real property rights.

(a) *Easements, rights-of-way, development rights, restrictions or the equivalent thereof.* The State Director is authorized to convey these rights for conservation purposes, roads, utilities, and other purposes as follows:

(1) Except as provided in paragraph (a)(3) of this seciton, easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which

will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

(2) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) For farm properties only, easements, restrictions, or the equivalent thereof may be granted or sold separately from the underlying fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a unit of local or State government or a private nonprofit organization.

(i) Conservation purposes include but are not limited to protecting or conserving the following environmental resources or land uses:

(A) Fish and wildlife habitats of local, regional or State importance,

(B) Floodplain and wetland areas,

(C) Highly erodible land as defined by SCS,

(D) Important farmland, prime forest land, or prime rangeland as defined in Departmental Regulation 9500-3, Land Use Policy,

(E) Aquifer recharge areas of local, regional or State importance,

(F) Areas of high water quality or scenic value, and

(G) Historic and cultural properties.

(ii) Development rights may be sold for conservation purposes for their market value directly to a unit of local or State governmental or a private nonprofit organization by negotiation.

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local or State government or a private nonprofit organization for conservation purposes providing the transaction will not adversely affect the financial interest of the FmHA. If such a conveyance will adversely affect the FmHA financial interest, the State Director will submit the proposal to the Administrator for approval, unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus. Sales proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter. Conveyances shall include terms and conditions which clearly specify the property interest(s) being conveyed as well as all appropriate restrictions and allowable uses. The conveyances shall also require the owner of such interest to permit the FmHA, and any person or government entity designated by the FmHA, to have access to the affected property for the purpose of monitoring compliance with terms and conditions of the conveyance. To the maximum extent possible, the conveyance should designate an organization or government entity for monitoring purposes. In developing the conveyance, the approval official shall consult with any State or Federal agency having special expertise regarding the environmental resource(s) or land uses to be protected.

(4) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) * * *

(1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests will be sold with the surface land and will not be sold separately, except as provided in paragrah (a) of this section and in § 1955.66(a)(2)(iii) of Subpart B of Part 1955 of this chapter. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

* * * * *

84. Section 1955.140 is amended by revising paragraph (a) to read as follows:

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is classified surplus because it is larger than a family-size farm, the State Director will subdivide the property into one or more suitable farm tracts and sell the suitable tracts to eligible applicants in accordance with § 1955.106 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of the property must not change its character from suitable to unsuitable or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land. If property is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110 percent of the portion of the outstanding loan prorated to the property released.

* * * * *

PART 1962—PERSONAL PROPERTY

85. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

86. § 1962.3 is amended by adding paragraph (d) as follows:

§ 1962.3 Authorities and responsibilities.

* * * * *

(d) *Farms in more than one jurisdiction.* If the farm is situated in more than one State, County, or Parish, the loan will be serviced by the County Office serving the County in which the borrower's residence is located. If the borrower is a corporation, cooperative, partnership or joint operation is the borrower's residence is not on the farm, the loan will be serviced by the County Office serving the County in which the farm or a major portion of the farm is located.

87. Section 1962.4 is amended by revising paragraph (c) to read as follows:

§ 1962.4 Definitions.

* * * * *

(c) *Borrower.* Individual(s), corporation, cooperative, partnership, or joint operation that is (are) liable for the loan(s) or any part thereof.

* * * * *

88. Section 1962.17 is amended by revising paragraphs (a), (b)(1), and (b)(2), by revising (b)(4), (b)(5) and (c)(5) and adding (c)(6) read as follow:

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

(a) *General.* (1) The borrower must account for all security and will be instructed of this requirement by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. When the borrower fails to account properly for security, the County Supervisor will take the actions required in § 1962.18 of this subpart. Releases of sales proceeds will automatically be terminated when either Exhibit D or E to Subpart A of Part 1955 of this chapter is sent to the borrow. Termination of such release will not occur prior to that time.

(2) Section 1924.57 of Subpart B of Part 1924 of this chapter requires that there must always be a current Form FmHA 1962–1 in the file of a borrower with a loan secured by chattels. If a borrower asks FmHA to release proceeds from the sale of chattels and there is not a current Form FmHA 1962–1 in the file, the County Supervisor will immediately begin working with the borrower to develop one. If the borrower's request for a release is denied, the borrower must be given a Form FmHA 1924–14, written explanation of the reason for the denial, and the opportunity for an appeal in accordance with Subpart B of Part 1900 of this part. The appeal hearing must be held within 20 days of the denial unless the borrower requests a longer time.

(b) * * *

(1) County Supervisors are authorized to approve or disapprove dispositions of FmHA chattel security in accordance with this subpart. The County Supervisor with the assistance of the borrower, will complete Form FmHA 1962–1 in accordance with the Forms Manual Insert (available in any FmHA office) to show how, when and to whom the borrower will sell, exchange or consume security and use sales proceeds (including milk sales proceeds) and insurance proceeds derived from the loss of security. This includes, for example, sales proceeds on hand and crops in storage. The five conditions set out in the form must all be met. These conditions are: (i) The proceeds from the sale, if any, are used for purposes and in the amount set forth on the form; (ii) a current farm and home plan or other similar plan of operation acceptable to FmHA has been completed and signed by the borrower and FmHA for loans secured by crops, livestock, livestock products, or when otherwise required by the County Supervisor; (iii) the borrower's projected income and expenses are based on the borrower's proven record of production and financial management (if the borrower does not have records, the County Supervisor will use Agricultural Stabilization and Conservation (ASCS) records, ES data, County averages or other reliable sources of data to develop projections); (iv) the borrower is utilizing the key production and financial management practices required by FmHA; and (v) the property is sold or exchanged for its present market value. The conditions set out in paragraph (b) (2) of this section must also be met.

(2) Sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of these liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to a prior lienholder and which come to FmHA can be used as follows:

(i) If a borrower *has* been sent a Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and the existing Form FmHA 1962–1 expires, a new Form FmHA 1962–1 must be completed.

(A) The form *must* provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business so that the borrower can pay essential household and farm operating expenses. Essential expenses are those which are basic, crucial or indispensable. This will not include expenses for expansion of the operation. Excess proceeds must be applied to the FmHA debt or used to preserve existing security. If the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business will not generate enough income to meet all essential household and farm operating expenses, the borrower may sell other chattel security (such as machinery, equipment or fountain livestock) to meet those expenses.

(B) Livestock can be used by the borrower's family for subsistence.

(C) Crops which serve as security may be marketed or fed to the borrower's livestock, provided FmHA obtains a lien on the livestock or livestock products.

(D) If the borrower responds to the Form FmHA 1924–25 and is granted a servicing action or prevails on appeal or makes restitution, the Form FmHA 1962–1 will be immediately revised in accordance with paragraphs (b)(2)(iii) of this section.

(E) If the borrower does not respond to the Form FmHA 1924–25, is not granted a servicing action, does not prevail on appeal or does not make restitution, releases will be made in accordance with paragraphs (b)(2)(i)(A)–(C) of this section until the borrower's account has been accelerated.

(ii) If the borrower *has not* been sent a Form FmHA 1924–25 *and cannot* complete a feasible farm plan, releases must be made in accordance with paragraph (b)(2)(i)(A)–(C) of this section.

(iii) If the borrower *has not* been sent a Form FmHA 1924–25 *and can* complete a feasible farm plan, proceeds can be used for any of the following purposes:

(A) Form FmHA 1962–1 must provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business so that the borrower can pay essential household and farm operating expenses. Essential expenses are those which are basic, crucial or indispensable.

(B) Proceeds can be applied to the FmHA debt.

(C) Proceeds can be used to purchase property better suited to the borrower's needs if FmHA will acquire a lien on the new property. The new property, together with any proceeds applied to the FmHA indebtedness, will have a value to FmHA at least equal to the value of the lien formerly held by FmHA on the old security.

(D) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met by other means or with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(E) Property can be exchanged for property which is better suited to the borrower's needs if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(F) Property can be consumed by the borrower as follows:

(*1*) Livestock can be used by the borrower's family for subsistence.

(*2*) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that FmHA obtains in lien (or assignment) on the livestock and livestock products at least equal in value to the lien on the crops.

* * * * *

(*4*) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received, as shown on Form FmHA 1962-1, the borrower will immediately notify the County Supervisor. Such notification may be by telephone to the County Office, by letter, by visit to the County Office, or any other method the borrower chooses. Changes which materially affect the borrower's operation will almost always require a visit to the County Office so that the County Supervisor and the borrower can complete a new Farm and Home Plan and revise Form FmHA 1962-1.

(*5*) If a borrower wants to dispose of chattels at a different time or in a different manner or wants to sell more or less than the planned quantity, the borrower must obtain FmHA's consent in advance of the sale. FmHA *must* give consent if the conditions set out on this form and in paragraph (b) of this section are met. When revisions are agreed to over the telephone, the County Supervisor should revise the Form FmHA 1962-1 contained in the borrower's case file, initial and date the change and mark the form "Revised." The County Supervisor will then either write to the borrower and confirm the revision, or send a copy of the "Revised" form to the borrower and ask the borrower to date and initial the change and return the form to the County Office. Otherwise, the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the County Office. Major changes in a borrower's operation will almost always require that the borrower visit the County Office so that a new Farm and Home Plan and a Form FmHA 1962-1 can be developed. If permission is not granted, see paragraph 1924.57(d)(2) of Subpart B of Part 1924 of this chapter.

(c) * * *

(5) Liens on separate items of chattels can be released to another creditor for purposes set out in paragraph (b)(2) of this section when it has been determined by a current appraisal that the value of the remaining security is substantially greater than the remaining FmHA debt.

(6) Liens on chattels for real estate type loans may be released when it has been determined by a current appraisal that the value of the remaining security is substantially greater than the remaining FmHA debt. Concurrence of the District Director must also be obtained for such a release and recorded in the running case record of the borrower's county office file.

* * * * *

89. Section 1962.34 is amended by revising paragraph (a)(3) to read as follows:

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

* * * * *

(a) * * *

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under paragraph (b) of this section. However, when one or more of the borrowers or jointly obligated partners or joint operators withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers, partners, or joint operators may be made as an eligible transferee.

* * * * *

90. Section 1962.41 is amended by revising paragraph (e) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(e) *Unpaid FmHA debt.* If the sale results in less than full payment of the FmHA debt, the borrower will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). The account will be considered for debt settlement.

§ 1962.42 [Amended]

91. Section 1962.42 is amended by redesignating paragraph (c)(9) as paragraph (d).

PART 1965—REAL PROPERTY

92. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note—Only Cases

93. Section 1965.2 is amended by designating the current paragraphs as paragraphs (a) and (b), respectively, and adding a new paragraph (c) to read as follows:

§ 1965.2 General policies.

(a) FmHA will service real estate security in a manner that best accomplishes the loan objectives and protects the Government's financial interest. To accomplish this, FmHA will service the real estate security in accordance with the security instruments and related agreements, including any authorized modifications and the provisions of this subpart.

(b) The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance, program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(c) If the farm is situated in more than one State, county or parish, the loan will be serviced by the County Office servicing the county in which the borrower's residence is located. If the borrower is a corporaton, cooperative, partnership or joint operation or if the borrower's residence is not on the farm, the loan will be serviced by the County Office servicing the county in which the farm or a major portion of the farm is located.

94. Section 1965.26 is amended by revising paragraph (f)(6) as follows:

§ 1965.26 Liquidation action.

* * * * *

(f) * * *

(6) If a release from liability cannot be granted, the borrower will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). The case will then be settled under the provisions of Part 1864 of this chapter (FmHA Instruction 456.1).

95. Section 1965.27 is amended by revising paragraph (b)(5) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(b) * * *

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Forms FmHA 450-10, "Advice of Borrower's Change of Address or Name," FmHA 465-5, and FmHA 1965-13 must be prepared and distributed in accordance with the FMI in each of the following situations.

(i) EM actual loss loans may be assumed on the same terms by those who were actually involved in the operation at time of the loss and meet one of the following requirements:

(A) If an individual received the actual loss loan, the transferee must be either an individual who is an immediate family member of the borrower or an entity which is made up of only immediate family members of the borrower. Such a transferee can assume the entire amount of the actual loss loan on the same terms.

(B) If a partnership on a joint operation received the actual loss loan, the transferee must be either a partner or a joint operator who was a partner or joint operator in the partnership or joint operation at the time the actual loss loan was made, or an entity which is made up of only those who were partners in the partnership or joint operators in the joint operation at the time the actual loss loan was made. Such transferees can assume the entire amount of the actual loss loan on the same terms.

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members who were stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

(ii) A deceased borrower's spouse, other relative or joint tenant who did not sign the note but who acquires title to the property will be allowed to assume the loan on the same terms. Form FmHA 465-5 will not be completed.

(iii) When one of the jointly liable individual borrowers withdraws from the operation and conveys his/her interest in the security to the remaining borrower, who will repay the total indebtedness, and assumption agreement is not required. This paragraph does not apply to partners in a partnership, joint operators in a joint operation, stockholders in a corporation or members of a cooperative. The previous joint owner will be released from liability for the indebtedness by completing Parts 1 and 3 of Form FmHA 1965-8, "Release from Personal Liability," provided:

(A) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(B) The value of the security is at least equal to the debt;

(C) The withdrawing party's interest in the security is conveyed to the person with whom the loan will be continued; and

(D) The person with whom the loan will be continued has adequate repayment ability.

(iv) A family member of a borrower who wants to assume a debt with the existing borrower(s) may do so on the same terms. After the transfer, the assuming family member may own the property jointly with the existing borrower(s) or subject to a life estate of the existing borrower.

(v) If there is only one stockholder/member/partner/joint operator of a corporation/cooperative/partnership/joint operation who is personally liable on the note, and that stockholder/member/partner/joint operator withdraws from the operation or dies, *all* of the remaining individuals will be required to assume personal liability on the loan(s) or else the transfer will not be approved. A Form FmHA 465-5 does not have to be processed unless title to the real estate is transferred.

(vi) If a stockholder/member/partner/joint operator or another corporation/cooperative/partnership/joint operation buy out the ownership interest of the other stockholders/members/partners/joint operators and continues to operate the farm; and if the remaining stockholder(s)/member(s)/partner(s)/joint operator(s) is not personally liable on the note(s), that stockholder(s)/member(s)/partner(s)/joint operator(s) will be required to assume personal liability on the loan(s) or else the transfer will not be approved. A Form FmHA 465-5 does not have to be processed unless title to the real estate is transferred.

(vii) New stockholders/members/partners/joint operators entering the corporation/cooperative/partnership/joint operation will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA 465-5 does not have to be processed unless title to the real estate is transferred.

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Dated: April 15, 1986.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 86-8831 Filed 4-18-86; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 303 and 381

[Docket No. 86-007N]

Meat and Poultry Inspection; Exemptions for Retail Stores; adjustment of Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Announcement of Adjustment of dollar limitations.

SUMMARY: This notice announces that the dollar limitations currently in effect for the annual sales of meat and poultry product by retail stores, exempt from Federal inspection requirements, to consumers other than household consumers, such as hotels, restaurants and similar institutions, remain at $28,800 for meat products and at $28,200 for poultry products per calendar year.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Irwin Dubinsky, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6735.

SUPPLEMENTARY INFORMATION.

Background

Federal inspection of meat and poultry products prepared for sale and distribution in commerce and in States designated under section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) is required by law and administered by the Food Safety and Inspection Service (FSIS). However, section 301(c)(2) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the Poultry Products Inspection Act (21 U.S.C. 454(c)(2)) state that the general requirement of routine