

Presidential Documents

Title 3—

The President

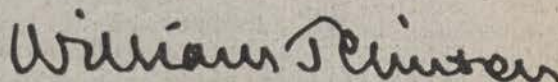
Presidential Determination No. 93-42 of September 30, 1993

Certification To Permit U.S. Contributions to the International Fund for Ireland

Memorandum for the Secretary of State

Pursuant to Section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (P.L. 99-415), I hereby determine and certify that: (1) the Board of the International Fund for Ireland as established pursuant to the Anglo-Irish Agreement of November 15, 1985, is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are authorized and directed to transmit this determination and certification to the Congress, together with the Memorandum of Explanation, and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 30, 1993.

Memorandum of Explanation for Certification of the Fiscal Years 1992 and 1993 U.S. Contribution to the International Fund for Ireland

I. Introduction

This report has been prepared to comply with legislative requirements associated with the Anglo-Irish Agreement Support Act of 1986, Public Law 99-415 ("the Act").

Section 5(c) of the Act requires that each fiscal year, prior to contributions to the International Fund for Ireland (IFI), the President certify to the Congress that he is satisfied the following conditions have been met:

A. The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities of Ireland and Northern Ireland;

B. Disbursements from the IFI:

1. will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and
2. will address the needs of both communities in Northern Ireland.

II. Background

A. ESTABLISHMENT AND OPERATION OF THE FUND

The International Fund for Ireland ("the Fund") was formally established as an independent entity on December 12, 1986, in keeping with the provisions of the Anglo-Irish Agreement of November 15, 1985. The overall objectives of the Fund are to promote economic and social advancement and to encourage contact, dialogue, and reconciliation between nationalists and unionists throughout Ireland and Northern Ireland. The Anglo-Irish Agreement states that the Fund shall accomplish these objectives by stimulating private investment and encouraging voluntary efforts with special emphasis on projects promoting communal reconciliation. The Agreement also stipulated the establishment of two investment companies under the Fund.

The Fund is an independent entity which is administered by a Board of Directors appointed jointly by the British and Irish governments. The Board is guided by a Joint Advisory Committee consisting of senior civil servants drawn equally from Northern Ireland and Ireland. The Advisory Committee's principal role is to advise the Board on the economic and social policies and priorities of the two governments and to maximize the impact of assistance by avoiding duplication of activity. The Board is supported by a Secretariat composed of administrators from the two jurisdictions. The Secretariat is headed by two Joint Director Generals, one from each side. The Fund's operating expenses are paid by the British and Irish governments.

The Fund's activities are developed primarily through program teams in the following areas: Business Enterprise, Tourism, Urban Development, Agriculture and Rural Development, Science and Technology, and the Wider Horizons Program. These program teams are composed of an equal number of representatives from Northern Ireland and the Republic of Ireland. The teams are administered by joint chairmen who keep the Board of Directors apprised of their respective program teams' activities.

In an effort to focus on the more disadvantaged areas, the Fund directs 70-80 percent of the resources available in the program sectors to disadvantaged areas in Northern Ireland. The Fund also created four additional program schemes: *Community Economic Regeneration*, which focuses on community driven regeneration of economic activity in urban areas; *Community Relations*, designed to promote reconciliation; *Disadvantaged Areas Special Projects*; and, the *Community Regeneration and Improvement Special Program (CRISP)* designated for disadvantaged areas in Northern Ireland and focuses the Fund's resources on smaller towns and villages by linking a series of projects from the various program areas together.

B. FUND CONTRIBUTIONS

The Fund receives contributions directly from bilateral and multilateral donors. U.S. obligations to date total \$170 million. Under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Congress appropriated an additional \$19.704 million in FY 1992 and \$19.704 million in FY 1993. Since 1989, the European Community has disbursed 15 million European Currency Units (approximately US\$20 million) per year to the Fund and will continue to contribute this amount until 1994. New Zealand contributed about \$0.16 million in FY 1992 and Canada has provided approximately \$0.39 million.

Each donor is entitled to appoint a representative to attend all Board meetings as a non-voting observer. Observers receive all Board papers and provide guidance to the Fund on behalf of their respective donor countries.

C. PROGRAM IMPLEMENTATION

Since its establishment in 1986, the Fund has approved a total of 2,263 projects and budgeted over \$343 million to its various program areas. Some \$284 million have been committed to approved projects within the various programs. The Fund has disbursed approximately \$182 million to ongoing

and completed projects, including \$26 million to the two investment companies.

Individual project applications continue to represent a majority of the projects for funding. However, the program teams are assisting various communities in identifying and preparing proposals through regular contact and consultation with a number of area Economic Development Consultants. The Consultants serve as a point of contact for local communities, provide technical assistance and advice, and help to speed program implementation.

The Fund has put into place a computerized system of recording key data for the projects. Information, such as employment generation, leveraging, and geographical distribution of funds, is collected and logged into the new system. The information system has assisted the IFI in developing its capacity to analyze and report on the economic and social indicators of the Fund's achievements.

New disbursement procedures have also been established for the U.S. contribution to the Fund. In October 1992, A.I.D. established a Letter of Credit mechanism to meet the legislative requirement to disburse funds at the minimum rate necessary to make timely payments for projects and activities. The Letter of Credit has allowed the U.S. Government to exercise greater control over money distributed to the Fund by transferring resources only when needed, and thereby minimizing interest costs to the U.S. Treasury.

D. JOB CREATION AND ADDITIONAL INVESTMENT

Two elements identified as priorities of the U.S. Government in its contribution to the Fund are job creation and the leveraging of additional investment into the economy. Both elements have been adopted by the Fund in the implementation of its program.

The Fund agrees that job creation is an essential factor in determining the allocation of Fund resources and clearly places an emphasis on the job creation potential of each project considered for funding. The Fund estimates that its activities directly resulted in the creation of about 18,000 new jobs and indirectly resulted in the creation of an additional 7,300 jobs. Construction activities have also resulted in 8,300 person-years of temporary employment.

The Fund has also been successful in leveraging new investment. Of the \$284 million of Fund resources committed to approved projects, another \$297 million and \$186 million of private and government resources, respectively, have been invested. Thus every dollar that the Fund has committed has resulted in an additional \$1.70 committed from other sources.

III. Presidential Certification Elements

Each fiscal year, prior to the United States making a contribution to the Fund, the President must certify that he is satisfied that the Fund has complied with the legislative requirements in the Act. This Certification covers both the FY 1992 and FY 1993 contributions to the Fund. The following discusses the required elements.

A. BOARD REPRESENTATION

The Board of Directors consists of seven members; three nominated by the British government, three nominated by the Irish government, and the Chairman. Board members are approved by both sides through consultations between the two governments. The Board, by design and agreement, is representative of the communities in both Northern Ireland and Ireland. The Board meets once every two months, primarily to review policy and procedural issues and to approve or reject proposals forwarded by the program teams for consideration. In addition, each Board member is responsible for coordinating with specific program teams and is consulted on a regular basis.

The Board members are as follows:

Mr. Willie McCarter, Chairman

Mr. John E. Craig

Mr. Paddy Duffy

Mr. Pat Kenny

Mrs. J. McCrum

Ms. C. Murphy

Mr. B.A. Slowey

The Chairman is a prominent businessman and Director of Fruit of the Loom, one of the largest employers in the Northwest with major factories located in Buncrana (Republic of Ireland) and Londonderry (Northern Ireland).

As in the past, the present Board is noted for its professionalism and integrity in setting policy and approving projects. The Board has taken a proactive role in promoting the Fund throughout Northern Ireland and Ireland as well as internationally.

B. DISBURSEMENTS FROM THE INTERNATIONAL FUND

The Fund's structure and policy framework ensure that resources are distributed in accordance with the principle of equality of opportunity and non-discrimination in employment, without regard to religious affiliation, and that these resources address the needs of both communities in Northern Ireland and the six border counties of the Republic of Ireland.

The board has developed its policies for disbursement of resources taking into account the terms of the Agreement under which it was established, the wishes of the donor countries, and the need to supplement the economic and social policies of the two governments. The Board structure and policy framework is manifested in the internal checks and balances in the Fund's appraisal, approval, and management systems. Also, the wide geographical distribution of approved projects enhances the Fund's efforts to meet the needs of both communities. The Fund's programs have created jobs, leveraged private investments, and fostered reconciliation. In addition, the Fund has made concerted efforts to target the most disadvantaged areas through CRISP and other special programs as well as through the work of development consultants.

1. Distribution of disbursements in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation.

a. Structure of the Fund. Ireland and Northern Ireland are equally represented by members of the Fund's Board of Directors, Advisory Committee, Secretariat, and Program Teams. These individuals are highly respected for their professional competence, integrity, and commitment to the Fund's objectives. The Advisory Committee, as mentioned above, is composed of senior officials of both the British and Irish governments and provides guidance and support for the Board. The Secretariat staff maintains the day-to-day operations of the Fund and have been carefully selected for their administrative skills and judgement. The Program Teams are staffed with technical and administrative professionals who are committed to the Fund's operating principles of non-discrimination. Review of the IFI portfolio of projects and visits to selected sites by Agency for International Development (A.I.D.) personnel has confirmed that the Fund has assembled a competent and professional staff who have cultivated and exercised sound project approval and management procedures.

b. Policy Framework. All Fund publications and solicitations for proposals clearly spell out the Fund's commitment to equality of opportunity and nondiscrimination. All successful applicants are required by the Board to agree to the following prior to receiving an award:

"Acceptance of a grant or loan under this scheme will be deemed to signify the applicant's acceptance of the principle of equality of opportunity and non-discrimination in employment, without regard to religious affiliation and that the applicant will be expected to use the money in accordance with this principle."

Letters of offer clearly state that any violation of this agreement will require immediate repayment of resources. To date, the Fund has not had to request repayment.

Equality of opportunity requirements are also enforced in Northern Ireland under the *Fair Employment (Northern Ireland) Act of 1989*. This Act makes employment discrimination on the grounds of religious belief or public opinion illegal. The Act is designed to eradicate job discrimination and ensure the active practice of fair employment opportunity throughout Northern Ireland.

c. *Project Appraisal and Approval*. The Fund has instituted a clear and systematic appraisal and approval system. Each Program Team has signed agreements with the Fund Secretariat which spell out the criteria upon which all applications are made. As mentioned above, the Program Teams consist of officials from various government agencies, both North and South, which, in close cooperation with the Secretariat, help to bring the programs to fruition. The Team members, chosen for their expertise in their particular sector, review each project based on its merit using standard economic and financial analysis tools, as well as criteria relevant to their technical field.

Projects must also be consistent with the economic and social policies and priorities of the British and Irish governments. Each government reserves the right to veto support for activities proposed which violate their stated policies. No resources are to be used, for example, to improve the standing of or to further the goals of any paramilitary organization, either directly or indirectly. The Fund, the British government, and the Irish government are, however, committed to supporting activities which contribute to viable, self-sustaining growth, prosperity, and stability. In addition, it is hoped that the projects will have a positive impact on increasing respect for human rights and fundamental freedoms for citizens of both traditions from Northern Ireland and the Republic.

Thus, within the Fund's policy guidelines and the established criteria for the evaluation and approval process, projects are accepted for funding, rejected, or forwarded to an appropriate government agency for possible support from existing government programs. Applications are processed in a timely and efficient manner, consistent with a proper and prudent review of projects. In addition, of course, a considerable responsibility rests with the individual promoters of projects who must take the lead in completing their share of the financial package and implementing the project to a stage where payment can be made.

Each decision to approve, disapprove, or forward a project to a government agency requires the recommendation of the relevant program team, the endorsement of the two Board members supervising the team, and the approval of the Fund Secretariat. Any projects which are controversial, raise policy issues, or exceed the program team's delegation of authority, are forwarded to the Board for consideration.

Equality of opportunity and nondiscrimination is the guiding principle under which the Fund operates. Projects are reviewed on merit alone, without regard to political or religious affiliations of the applicants. The cross-community composition of the Fund Board, the Secretariat, and the program teams ensures this principle.

2. Addressing the needs of both communities in Northern Ireland.

In order to comply with British law, the principles under which the Fund was established, and the U.S. Government priorities under which our contribution was made, religious affiliation is not a factor in the approval

process. It is generally known, however, which religious majority is predominant within a specific geographical area.

During the program review visit by an A.I.D. official in May of 1992, management officials, community leaders, grantees, and program implementors were asked to comment on the extent to which the needs of both communities were being met. All respondents believed that every effort was being made to strengthen the cross-community nature of the programs. Many spoke of how, through Fund activities, they were able to experience for the first time a working or recreational experience with people of the opposite tradition. Such liaisons have produced cross-community boards of directors (under such organizations as the enterprise centers), cross-community enterprise matchmaking, cross-border joint ventures (such as the Derry-Galway-Boston Trade Fair), and genuine friendships. The civil servants of both governments in laboring together on the Fund have also developed excellent working, as well as personal, relationships with their counterparts. Such interaction contributes to reconciliation through dialogue and cooperation.

The Fund has made a concerted effort to direct assistance to the more economically disadvantaged areas. Special programs, such as CRISP, have been developed toward this end. The work of the development consultants is important in assisting the disadvantaged communities to develop ideas and proposals to help themselves through the Fund. The consultants participate in establishing local groups, ensure cross-community participation whenever possible, and assist groups in creating viable projects. In many cases, however, the IFI merely serves as a catalyst for community initiatives that have been developing independently of the Fund. The consultants are also instrumental in contributing to a greater overall understanding and positive perception of the Fund among the people of both communities.

IV. Conclusion

A review of Fund activities and a visit to Ireland and Northern Ireland by a senior A.I.D. officer confirms that the Board of Directors has maintained policies and procedures designed to ensure that both traditions benefit from Fund activities. The Board's operating principles ensure that project decisions are made on the basis of merit. In addition, it has been concluded that Fund resources are being distributed in a manner consistent with its mandate as stated above. All grantees are made aware of the principles of equality of opportunity and nondiscrimination in employment, stipulated by acceptance of any grant monies.

This report therefore concludes that:

- The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities in Ireland and Northern Ireland.
- Monies from the Fund are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland.

Appendix I.—Projects Approved, Program Allocations, Commitments, and Disbursements

[\$ Million]

Projects	Projects approved	IFI program budget	Committed	Disbursed
Rural Development	530	14,172	9,905	6,117
Wider Horizons	236	26,055	21,110	21,491
Business Enterprise	232	56,454	48,042	37,353
Tourism	329	66,377	52,494	33,851
Urban Development	699	54,849	40,695	18,623
Community Relations	68	4,461	3,503	2,496
Disadvantaged Areas Initiative	49	49,317	41,544	10,740
Special Projects	29	11,208	10,241	8,456
Flagship Projects	2	11,285	9,758	6,713
Science and Technology	60	19,872	17,400	11,933
Sub-Total	2,234	314,050	254,692	157,773
Investment Companies	29	29,468	29,468	24,468
Total	2,263	343,518	284,160	182,241

Appendix II.—Estimated Employment Generated

Projects	Direct	Indirect	Construction (man years)	Total
Rural Development	704	270	259	1,233
Wider Horizons	5,259	1,770	1,156	8,185
Business Enterprise	2,403	1,652	1,951	6,006
Tourism	4,651	1,786	2,213	8,650
Urban Development	12	5	29	46
Community Relations	2,157	706	1,389	4,252
Disadvantaged Areas	1,623	383	122	2,128
Special Projects	561	42	1,072	1,675
Flagship Projects	154	41	63	258
Science and Technology	17,524	6,655	8,254	32,433
Sub-Total	739	372	40	1,151
Investment Companies	17,963	7,327	8,294	33,584
Total				

Appendix III.—Amount Leveraged on Approved Projects Commitments, and Disbursements

[\$ Million]

Projects	Private sector	Government	IFI	Total
Rural Development	11,835	4,740	9,905	26,480
Wider Horizons	7,152	11,291	21,110	39,553
Business Enterprise	32,379	52,448	48,042	132,869
Tourism	94,062	1,206	52,494	147,762
Urban Development	90,012	5,525	40,695	136,232
Community Relations	7,989	2,805	3,503	14,297
Disadvantaged Areas	3,114	30,459	41,544	75,117
Special Projects	10,155	15,809	10,241	36,205
Flagship Projects	1,830	41,084	9,758	52,672
Science and Technology	12,924	14,171	17,400	44,495
Sub-Total	271,452	179,538	254,692	705,682
Investment Companies	25,904	6,521	29,468	61,893
Total	297,356	186,059	284,160	767,575

Appendix IV.—Geographical Distribution of IFI Approved Projects

District Council (North):	
Ballymena	34
Ards	42
Belfast	93
Castlereagh	3
Lisburn	21
Down	90
North Down	26
Antrim	23
Carrickfergus	29
Larne	19
Newtonabbey	23
Coleraine	57
Ballemoney	20
Moyle	27
Cookstown	28
Banbridge	17
Craigavon	65
Armagh	91
Dungannon	107
Fermanagh	168
Londonderry	45
Limavady	29
Magherafelt	40
Newry & Mourne	166
Omagh	81
Strabane	68
Unallocated	314
Sub-Total	1,726
County (South):	
Cavan	77
Donegal	122
Leitrim	71
Louth	59
Managhan	87
Sligo	65
Unallocated	19
Sub-Total	500
Joint Regional Programs	37
Total	2,263

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Rules and Regulations

Federal Register

Vol. 58, No. 195

Tuesday, October 12, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

COMMODITY FUTURES TRADING COMMISSION

5 CFR Chapter XLI

RIN 3209-AA04 and 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations (supplemental regulations) for members and other employees of the Commission which supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE, effective February 3, 1993. The regulations are a necessary supplement to the Executive Branch Standards because they address ethical issues unique to the Commission. The supplemental regulations, the substance of which has applied to Commission employees under its conduct standards codified in 17 CFR chapter I, relate to financial interests and transactions and to outside employment and activities.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Gasteiger, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006-35067, as

corrected at 57 FR 48557 and 57 FR 52583. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Commission, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter XLI of 5 CFR, are necessary to implement the Commission's ethics program successfully, in light of the Commission's unique programs and operations. In a related action, the Commission is today repealing certain portions of its code of conduct which have been superseded by the Standards and is recodifying at 17 CFR part 140 other portions of that code which it has independent authority to adopt.

II. Analysis of the Regulations

Section 5101.101 General

Section 5101.101 explains that the regulations apply to members and other employees of the Commission and supplement the Standards. It also notes that members and other employees are required to comply with 5 CFR part 2635, this part and the existing Commission regulations being recodified in 17 CFR part 140.

Section 5101.102 Prohibited Financial Interests and Transactions

Section 5101.102 incorporates reference to existing Commission regulations recodified in 17 CFR 140.735-2 which implement and interpret the restrictions on certain financial interests and transactions in sections 2(a)(7) and 9(c) and (d) of the Commodity Exchange Act. Because the financial interests restricted by those regulations are prohibited financial interests within the meaning of 5 CFR 2635.403, the Commission, at the request of OGE, has included a cross-reference to recodified 17 CFR 140.735-2 in § 5101.102 of its supplemental regulations.

Section 5101.103 Outside Employment and Activities

As permitted by 5 CFR 2635.802, the Commission is issuing § 5101.103(b) as

a supplemental regulation. This regulation sets forth prohibitions on non-Governmental employment and outside activities applicable to Commission members and employees. Prohibited activities listed in § 5101.103(b) include the rendering of advice concerning any legal, accounting or economic matter, or any agricultural, mining, foreign currency market or other commodity-related matter, in which the Commission may be significantly interested. Also prohibited are legal representational activities in relation to any matter which relates to any policy, program or operation of the Commission. The Commission has determined that these prohibitions, which have applied to Commission personnel under superseded 17 CFR 140.735-5, should be continued to help ensure that reasonable persons will not question the impartiality and objectivity with which the Commission's programs are administered. The rule also provides that a special Government employee is not subject to the prohibition against furnishing commodity-related advice unless the employee has participated personally and substantially in the same matter or has served with the Commission 60 days or more during the immediately preceding year. Finally, § 5101.103(b) incorporates by reference the prohibition in section 2(a)(7) of the Commodity Exchange Act on Commission members or employees accepting employment from any person, exchange or clearinghouse subject to regulation by the Commission or participating in operations or transactions subject to regulation by the Commission.

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under superseded 17 CFR 140.735-5 the Commission has long required notification by employees who undertake outside employment. Based on its finding that this requirement has helped to ensure that employees' outside activities conform to applicable statutes and regulations, the Commission has determined to continue this requirement in § 5101.103(c) as necessary for the purposes of its ethics program. Section 5101.103(c) also makes clarifying changes to conform the regulation to the Commission's practices administering 17 CFR 140.735-5. Before

engaging in any outside employment, with or without compensation, § 5101.103(c) requires a Commission employee (other than a special Government employee) to obtain written approval from his or her division or office head and the Executive Director. In addition, an employee must obtain written approval from the Commission to appear in court or on a brief in a representative capacity.

"Employment" is broadly defined at § 5101.103(c)(5) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

Section 5101.103(c)(3) provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations. And, § 5101.103(c)(4) sets forth the requirements for submission and processing of a written request for approval.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. In addition, the substance of these rules already applies to Commission employees under the Commission's ethics standards contained in 17 CFR part 140, subpart C, 17 CFR 140.735-1-140.735-16 which, as noted above, is simultaneously being revoked in part and recodified in part by the Commission in a separate rulemaking document. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make these rules effective upon publication in the Federal Register.

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96-354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*,

requires each Federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of these supplemental regulations since they relate solely to agency procedure or practice.

Paperwork Reduction Act

The Paperwork Reduction Act of 1989, ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that this rulemaking does not impose any information collection requirements as defined by the PRA.

List of Subjects in 5 CFR Part 5101

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: September 27, 1993.

Jean Webb,

Secretary, Commodity Futures Trading Commission.

Approved: September 28, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XLI, consisting of part 5101, to read as follows:

CHAPTER XLI—COMMODITY FUTURES TRADING COMMISSION

PART 5101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE COMMODITY FUTURES TRADING COMMISSION

Sec.

5101.101 General.

5101.102 Prohibited financial interests and transactions.

5101.103 Outside employment and activities.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 7 U.S.C. 4a(f) and (j); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 5101.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Commodity Futures Trading

Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Members and other employees are required to comply with 5 CFR part 2635 and this part. Commission members and other employees are also subject to the Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission at 17 CFR part 140.

§ 5101.102 Prohibited financial interests and transactions.

In accordance with 5 CFR 2635.403(a), no Commission member or other employee shall engage in business or financial transactions, or hold business or financial interests, prohibited by the Commodity Exchange Act, as set forth in 17 CFR 140.735-2.

§ 5101.103 Outside employment and activities.

(a) Subject to the restrictions and requirements contained in 5 CFR part 2635 and this part, Commission members and other employees are encouraged to engage in teaching, speaking, and writing activities and, when qualified, to participate without compensation in programs to provide legal assistance and representation to indigents.

(b) *Prohibitions.* A Commission member or other employee shall not engage in non-Federal employment or any other outside activity that:

(1) Involves the rendering of advice concerning any legal, accounting or economic matter, or any agricultural, mining, foreign currency market or other commodity-related matter, in which the Commission may be significantly interested, except that this prohibition shall not apply to a special Government employee unless the special Government employee

(i) Has participated personally and substantially as an employee or special Government employee in the same matter; or

(ii) Has served with the Commission 60 days or more during the immediately preceding period of 365 consecutive days.

(2) Involves an appearance in court or on a brief in a representative capacity in relation to any matter which relates to any policy, program or operation of the Commission; or

(3) Is prohibited by section 2(a)(7) of the Commodity Exchange Act, as incorporated in 17 CFR 140.735-2 and 140.735-3. That statute provides that no Commission member or employee shall accept employment or compensation from any person, exchange or

clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

(c) *Prior approval for outside employment.* (1) Before engaging in any outside employment, with or without compensation, an employee of the Commission, other than a special Government employee, must obtain written approval from his or her division or office head and the Executive Director, who may seek the concurrence of the General Counsel.

(2) In addition to the approval under paragraph (c)(1) of this section, an employee, including a special Government employee, must obtain written approval from the Commission to appear in court or on a brief in a representative capacity.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) The approval required by paragraph (c)(1) or (c)(2) of this section shall be requested in writing in advance of engaging in outside employment. The request shall be submitted to the employee's division or office head, through the employee's immediate supervisor, and shall set forth all pertinent facts regarding the anticipated employment, including the name of the employer, the nature of the work to be performed, its estimated duration and the amount of compensation to be received. If approved by the division or office head, the request shall be forwarded by the division or office head to the Executive Director. In granting or denying approval, the Executive Director may seek the concurrence of the General Counsel. If approved by the Executive Director, a request for permission to appear in court or on a brief in a representational capacity shall be forwarded to the Commission for final decision.

(5) For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit

charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

[FR Doc. 93-24638 Filed 10-8-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1744

Borrower Investments—Telephone Loan Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds a regulation concerning the types of investments REA telephone borrowers may make without prior approval of the Administrator of REA. The regulation is necessary to implement a new policy created by the Rural Economic Development Act of 1990. The purpose of this new policy is to provide an incentive for REA telephone borrowers to invest in rural communities and businesses. The regulation will establish REA's procedure for the treatment of investments in rural development projects when determining a borrower's allowable distribution of capital.

EFFECTIVE DATE: This regulation is effective on November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2832-S, 14th and Independence Avenue, SW., Washington, DC 20250-1500, telephone number (202) 720-0530.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will have retroactive effect with respect to

investments in rural development projects. This final rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; and

(2) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA programs provide and finance grants and loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining Federal financing, receive economic benefits which ultimately offset any direct economic costs associated with complying with REA regulations and requirements. Moreover, this action eases certain investment restrictions by allowing certain borrowers to invest in rural development projects without REA approval, which further offsets economic costs.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The OMB control number for these requirements is 0572-0098, which expires on September 30, 1995.

The public reporting and recordkeeping burden for this collection of information is estimated to average 3.16 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Office, Office of Information Resources Management, room 404-W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Comments

On September 1, 1992, REA published a proposed rule in the *Federal Register* (57 FR 39628) implementing a new policy that would enable a REA telephone borrower to invest in rural development projects without prior approval of the Administrator of REA. This action was necessary to comply with section 2356 of the Rural Economic Development Act of 1990 (7 U.S.C. 926). The primary purpose of this new policy is to provide an incentive for REA telephone borrowers to invest in economic development projects that benefit rural communities and businesses. It is believed that this regulation could have a positive effect on rural communities and businesses served by the financially sound REA telephone borrowers. Eligible telephone borrowers that choose to invest in rural development projects could benefit both directly, through returns on their rural development project investments, and indirectly if the local economy grows, generating increased demand for telephone services.

REA received joint comments from the National Rural Telecom Association (NRTA) and the Western Rural Telephone Association (WRTA) regarding the proposed rule, which were

taken into consideration in preparing the final rule. The comments and/or modifications will be discussed in the order in which they appear in the final rule.

Executive Order 12778

Comment: The commenter objected to the reference to the "retroactive effect" of the proposed rule under this section stating that nothing contained in the statute, express or implied, would suggest that Congress intended this rule to be applied retroactively. The commenter wanted all references to a retroactive application to be deleted from the final rule.

Response: The requirements of the final rule reflect REA's interpretation of section 205 of the RE Act since the effective date of this section and is consistent with the language of section 205. This approach facilitates the most effective administration of this policy, particularly the implementation of new procedures equitable to all borrowers. Therefore, the commenter's proposed change was not accepted.

Section 1744.200 General statement.

Comment: The commenter suggested that to more accurately reflect the intent of Congress, REA should amend the first sentence by inserting the following language which is consistent with the language in House Report 101-415: "REA telephone borrowers are encouraged to invest their own resources in the development of their local rural areas in keeping with the requirements of the statute limiting the amount of such investments in relation to the borrower's net worth which protects the government's legitimate loan security interests."

Response: REA believes this section sets forth the underlying purposes of the RE Act.

Section 1744.201 Definitions.

Comment: The commenter suggested that a definition of "qualified borrower" should be added to this section and defined in accordance with section 205(b) of the RE Act.

Response: Qualified borrower is defined in section 205(b) as "... a person whose net worth is at least 20 percent of the total assets of such person." REA does not interpret section 205(b) of the RE Act as requiring REA to use the specific term "qualified borrower", however, REA has incorporated the concept of "qualified borrower" in § 1744.201 under the heading "Minimum total assets ratio": means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment. This

definition facilitates efficient policy administration by REA while providing clear and concise instructions for the borrowers.

Comment: The commenter suggested that specific reference should be made to the Governor of the Rural Telephone Bank (RTB) and the application of this rule to the RTB loan program.

Response: This change has been made, see paragraph (b) of §§ 1744.200 and 1744.201.

Comment: The commenter suggested that the definition of maximum investment ratio should be revised to incorporate the concept of the timing of the calculation of the eligible investment amount to "immediately after such investment" as required by the statute.

Response: Borrowers are to determine the maximum investment ratio based on balances in their calendar year end financial report. This is necessary to ensure a clear and definitive statement for all parties when setting the "as of" date for figures to be used for the calculation. Uniform requirements permit reliable assessments of the borrowers' financial capabilities.

Section 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

Comment: The commenter suggested that the title and paragraph (a) should be amended to refer to "qualified borrowers", and by deleting the reference to "qualified investments". The commenter stated that "qualified" borrower is a reference to the statutory provision, "qualified" investments is an extraneous concept.

Response: See the response to the first comment on § 1744.201. Also, reference to "qualified investments" was retained.

Comment: The commenter objected to paragraph (b) in its entirety stating that it serves no legitimate purpose in implementing the statutory provision and is an unnecessary regulatory burden. The commenter wanted this paragraph deleted from the final rule.

Response: The definition of "qualified investment" informs the reader of what REA considers to constitute an investment and what is meant by "rural development."

Comment: In paragraph (b)(3), the commenter objected to REA's requirement that a borrower use its "own funds" when making rural development investments, and further objected to the definition of "own funds"; specifically, the reference to funds necessary for future loan payments.

Response: The definition of "own funds" informs the reader of what REA

does not consider to constitute own funds. The reference to "funds necessary for future loan payments" provides assurance that the borrower will not use funds needed to meet its loan payment obligations for other purposes.

Comment: In paragraph (d), the commenter objected to the requirement that investments be made "for a period longer than one year" stating that no where in the statute does such a requirement appear and the agency does not have the authority to impose it under the guise of implementing the statutory provision. The commenter wanted this requirement deleted from the final rule.

Response: REA believes the intent of section 205 of the RE Act is to promote long-term rural economic growth. REA is concerned that the ultimate beneficiaries, rural businesses and communities, could not achieve sustainable development if the investment goal was short-term profit maximization. Long-term commitments by borrowers are crucial to the advancement and viability of rural America.

Section 1744.203 Establishing amount of rural development investment.

Comment: The commenter objected to the concept of "estimates of future investment amount" in the calculation of the aggregate total of allowable investments and stated that this concept is outside the parameters of the statute and should be deleted from the final rule. Also, the concept of "committed funds" is extraneous to the statute.

Response: This requirement applies only to borrowers who have committed to provide funds to the project at a future date. In the interests of loan security and consistent policy guidelines, this requirement is necessary because it enables effective and accurate monitoring of the borrower's investments and financial obligations.

Comment: The commenter stated that it was the borrower's obligation to determine that it was in compliance with section 205 of the RE Act, not REA, and, that REA was given no monitoring or verification role.

Response: As a Federal lending institution, REA has an obligation to protect the Government's security interests by overseeing borrower compliance. The criteria put forth in section 205 of the RE Act determines the borrower's rural development capabilities but does not mean that investments may be made even at the risk of loan security.

Section 1744.204 Rural development investments that do not meet the ratio requirements.

Comment: The commenter suggested that paragraph (c) be revised to eliminate the notion that the one-third aggregate investments test or the 20 percent net worth test for qualified borrowers are ongoing requirements or tests that must be maintained by the borrower in the future.

Response: The regulation was changed to clarify this point, see § 1744.206.

Section 1744.205 Determinations and application of limitations described in § 1744.202.

Comment: The commenter suggested that paragraph (c) be revised to accurately reflect the timing of the calculation required under the statute to "immediately after such investment" stating that REA has no authority to establish timing different from that contained in the statute.

Response: See the response to the third comment on § 1744.201.

Section 1744.207 Investment not to jeopardize loan security.

Comment: The commenter objected to this section in its entirety stating that, Congress has determined that investments in rural development by qualified borrowers that do not exceed one-third of such borrower's net worth in the aggregate calculated immediately after the investment do not violate the Government's legitimate loan security interests. Therefore, no additional requirements are necessary or warranted under the rule. The commenter wanted this section deleted from the final rule.

Response: The criteria put forth in section 205 of the RE Act determines the borrower's rural development capabilities, it does not imply that risks to loan security are nonexistent if the borrower meets the criteria. This requirement is needed because as a Federal lending institution, REA has an obligation to protect the Government's security interests.

Section 1744.208 Rural development investments before November 28, 1990.

Comment: The commenter requested that this section be revised to exclude from the maximum investment ratio, that is, the one-third aggregate investment test, rural development investments made by the borrower before November 28, 1990.

Response: See the response to the comment on Executive Order 12778.

Some minor changes were made in the regulatory text for the purpose of simple clarification. Also, former

§§ 1744.203 through 1744.208 were renumbered because two new sections were added to the final rule, and the headings to §§ 1744.203 and 1744.204 were changed.

In § 1744.201, the definitions of "Advance" and "Extension of credit" were added, as were the definitions of "Maximum investment ratio" and "Minimum total assets ratio" which were moved from the former paragraphs (b) and (e) of § 1744.202, respectively. In addition, the definitions of "Administrator", "Borrower", and "REA" were reworded slightly.

In paragraphs (b)(1) and (2) of § 1744.202, "guarantor" was changed to "guarantee" and "extension of credit, or advance" was added for clarification.

§ 1744.203 was reorganized for clarity purposes.

In § 1744.204, the terms "investment" or "invest" were substituted for "expenditures" or "expend."

In paragraph (c) of § 1744.205, the term "net plant" was deleted because it was unnecessary.

Finally, the former § 1744.209, OMB control number, was deleted in its entirety because the content of this section was addressed in the Supplementary section of this final rule.

List of Subjects in 7 CFR Part 1744

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Subpart D is added and reserved and subpart E is added to read as follows:

Subpart D—[Reserved]

Subpart E—Borrower Investments

Sec.

1744.200 General statement.

1744.201 Definitions.

1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

1744.203 Establishing amount of rural development investment.

1744.204 Rural development investments that do not meet the ratio requirements.

1744.205 Determinations and application of limitations described in § 1744.202.

1744.206 Effect of subsequent failure to maintain ratios.

Sec.

- 1744.207 Investment not to jeopardize loan security.
- 1744.208 Rural development investments before November 28, 1990.
- 1744.209 Records.
- 1744.210 Effect of this subpart on REA loan contract and mortgage.

Subpart D—[Reserved]**Subpart E—Borrower Investments****§ 1744.200 General statement.**

(a) REA telephone borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not impair a borrower's ability to provide modern telecommunications services at reasonable rates or to repay its indebtedness to REA and other lenders. When considering loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve.

(b) This subpart E applies to both REA and RTB borrowers. For the purposes of RTB borrowers, as used in this subpart E, if a borrower has received a loan from the RTB, REA means RTB, and Administrator means Governor unless the text indicates otherwise.

§ 1744.201 Definitions.

As used in this subpart:

Administrator means the Administrator of the Rural Electrification Administration (REA) and, as provided in § 1744.200(b), the Governor of the Rural Telephone Bank (RTB).

Advance means any funds provided of which repayment is expected.

Affiliated company means any organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

Borrower means any organization which has an outstanding loan made by REA or RTB, or guaranteed by REA, or which is seeking such financing.

Extension of credit means to make loans or advances.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of affiliated companies. Some examples of such guarantees would include:

- (1) Guarantees of payment or collection on a note or other debt instrument;
- (2) Issuing performance bonds or completion bonds; or

(3) Cosigning leases or other obligations of third parties.

Maximum investment ratio means that the aggregate of all qualified investments by the borrower including the proposed qualified investment shall not be more than one-third of the net worth of the borrower.

Minimum total assets ratio means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment.

Net plant means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Telecommunications plant in service	2001
(2) Property held for future telecommunications use	2002
(3) Telecommunications plant under construction-short term	2003
(4) Telecommunications plant under construction-long term	2004
(5) Telecommunications plant adjustment	2005
(6) Nonoperating plant	2006
(7) Goodwill	2007
(8) Less accumulated depreciation	3100 through 3300s
(9) Less accumulated amortization	3400 through 3600s

Note: All references to account numbers are to the Uniform System of Accounts (47 CFR part 32).

Net worth means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Capital stock	4510
(2) Additional paid-in capital	4520
(3) Treasury stock	4530
(4) Other capital	4540
(5) Retained earnings	4550

Note: For nonprofit organizations, owners' equity is shown in subaccounts of 4540 and 4550. All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Qualified investment is defined in § 1744.202(b).

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture and, as provided in § 1744.200(b), the RTB.

REA mortgage means the instrument creating a lien on or security interest in the borrower's assets in connection with a loan made or guaranteed under the RE Act.

RTB means the Rural Telephone Bank, an agency and instrumentality of

the United States within the United States Department of Agriculture.

Rural development investment is defined in § 1744.202(d).

Total assets means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Current assets	1100s through 1300s
(2) Noncurrent assets	1400s through 1500s
(3) Total telecommunications plant	2001 through 2007
(4) Less accumulated depreciation	3100 through 3300s
(5) Less accumulated amortization	3400 through 3600s

Note: All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Uniform System of Accounts means the Federal Communications Commission Uniform System of Accounts for Telecommunications Companies (47 CFR part 32) as supplemented by 7 CFR Part 1770, Accounting Requirements for REA Telephone Borrowers.

§ 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

(a) A borrower that equals or exceeds the minimum total assets ratio may make a qualified investment, defined in paragraph (b) of this section without prior written approval of the Administrator.

(b) A qualified investment is a rural development investment, defined in paragraph (d) of this section meeting the following criteria:

(1) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower receives any financial return accruing to such investment, or the borrower's proportionate share of such return;

(2) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower retains title to any asset acquired with such investment, or the borrower's proportionate share of such title; and

(3) The funds committed are the borrower's own funds. As used in this subpart, the term own funds shall not include proceeds of loans made, guaranteed or lien accommodated by REA; funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien

accommodated by REA; and funds on deposit in the cash construction fund-trustee account, as defined in the borrower's loan contract with REA.

(c) A rural development investment will not be considered to be a qualified investment to the extent that the amount of such investments exceeds the borrower's maximum investment ratio.

(d) A rural development investment is an investment, extension of credit, advance, or guarantee by a borrower for a period longer than one year and for one or more of the following purposes:

(1) Improve the economic well-being of rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

(2) Improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

(3) Improve state and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for state and local officials, particularly in small rural communities;

(4) Strengthen the family farm system;

or

(5) Maintain and protect the environment and natural resources of rural areas.

(e) As used in paragraph (d) of this section, the term rural development investment shall include investments by a borrower in its own name, in affiliated companies, and in entities not affiliated with the borrower.

§ 1744.203 Establishing amount of rural development investment.

For purposes of determining whether a rural development investment is within the limits of the borrower's maximum investment ratio or the minimum total assets ratio, the amount of the qualified investment shall be the total amount of funds committed to the rural development project as of the date of determination. The total amount of funds committed to the rural development project includes:

(a) The principal amount of loans and advances made by the borrower;

(b) Guarantees made by the borrower; and

(c) A reasonable estimate of the amount the borrower is committed to provide to the rural development project in future years.

§ 1744.204 Rural development investments that do not meet the ratio requirements.

(a) Each borrower is authorized to make investments other than qualified investments only in accordance with the provisions of the borrower's mortgage with REA. Without REA's approval, the portion of any investment of funds or commitment to invest funds for any rural development investment that will exceed the borrower's maximum investment ratio or cause the borrower to fall below the minimum total assets ratio, must comply with the provisions of the REA mortgage.

(b) REA will consider, on a case-by-case basis, requests for approval of rural development investments not constituting qualified investments. REA may condition such approval, if granted, on such requirements and restrictions as REA may determine to be in the best interests of the Government, including, without limitation, the borrower's agreement to limit dividends or distributions of capital by an amount specified by REA. Requests for such approvals must be submitted in writing to the relevant REA regional office and shall include:

(1) A description of the rural development project and the type of investment to be made, such as a loan, guarantee, stock purchase or equity investment;

(2) A reasonable estimate of the amount the borrower is committed to provide to the rural development project including investments that may be required in the future; and

(3) A pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to the rural development project.

(c) In determining whether to approve a rural development investment that may cause the borrower to exceed the maximum investment ratio or to fall below the minimum total assets ratio in the future, REA will consider annual increases to the borrower's net worth and total assets as might be reasonably anticipated from the borrower's normal operations.

§ 1744.205 Determinations and application of limitations described in § 1744.202.

(a) REA will not include qualified investments, including qualified investments in affiliated companies, in calculating the amount of dividend or capital distributions a borrower may make under its REA mortgage.

(b) A borrower's investment in its net plant shall not be considered a rural development investment for purposes of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net worth and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA) (47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

§ 1744.206 Effect of subsequent failure to maintain ratios.

If an expenditure constitutes a qualified investment under the terms of this subpart, it does not cease to be a qualified investment merely because subsequently the borrower fails to maintain the maximum investment ratio or the minimum total assets ratio.

§ 1744.207 Investment not to jeopardize loan security.

A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

(a) The security of loans made or guaranteed by REA; or

(b) The borrower's ability to repay such loans under the terms and conditions as agreed.

§ 1744.208 Rural development investments before November 28, 1990.

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has been approved by REA. Any restrictions required by REA as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

§ 1744.209 Records.

(a) The records of borrowers, including records relating to qualified investments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. REA reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to REA on the end-of-year operating report, REA Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572-0098.)

§ 1744.210 Effect of this subpart on REA loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with REA, its notes issued to REA, and the REA mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than REA, whose loan to the borrower is secured by the REA mortgage.

Dated: October 1, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93-24761 Filed 10-8-93; 8:45 am]

BILLING CODE 3410-15-F

Farmers Home Administration

7 CFR Parts 1900, 1910, 1951, 1955, 1962, and 1965

RIN 0575-AA39

NonProgram (NP) Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is implementing new regulations for NonProgram (NP) loans. This action is necessary since NP loans are not eligible for program supervision and servicing and NP debtors are not eligible for program benefits and entitlements. They cannot, therefore, be made, managed, collected, and liquidated in the same manner as program loans. In the past, there have been a relatively small number of NP loans, which are on more stringent terms than program loans and are an extension of credit for the convenience of the Government. The intended effect is to have a regulation for the uniform handling of NP loans.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 720-1452.

SUPPLEMENTARY INFORMATION: This final rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs 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.

BACKGROUND INFORMATION: On August 17, 1989 (54 FR 33906), Farmers Home Administration published a proposed rule on procedures for the making, management, servicing, and liquidation of nonprogram (NP) loan(s). FmHA now publishes this procedure for final rule. 7 CFR, part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans is a new regulation which establishes procedures for the making, management, servicing, and liquidation of nonprogram (NP) loans. Nonprogram (NP) loans are an extension of credit for the convenience of the Government to facilitate loan servicing actions or assist with the sale of acquired property. Program credit is not provided because the property either does not meet current program requirements and/or the applicant does not meet current loan program eligibility requirements. An NP loan is made on more stringent terms than a program loan. Previously, guidance on handling NP loans was dispersed through various regulations including Subparts A and C of part 1965 and subpart C of part 1955. The new regulation combines those portions of these regulations on NP loans into one regulation and provides for guidance that was not previously and/or explicitly provided in existing regulations. This will make it easier for FmHA personnel and the general public to ascertain FmHA's regulations on NP loans.

The issues in subpart J of part 1951 which were not explicitly included in the proposed rulemaking but are part of

the subject matter addressed in the proposed rulemaking are as follows:

1. Provides that an appraisal fee will be collected from applicants who wish to obtain FmHA credit to purchase a Single Family residence at the time the applicant is determined eligible for FmHA financing. This requirement has recently been implemented for program applicants. It would not be equitable to impose a financial burden on program applicants and have the Agency pay the fee for nonprogram applicants; therefore, the collection of an application fee will be required from both program and nonprogram applicants.

2. Provides that NP loans include loans converted to NP status when only a portion of the security property is being transferred and the FmHA debt is not paid in full.

3. Establishes that NP loans can be reamortized when initially establishing a borrower on an escrow system when real estate taxes for one or more years and/or an insurance premium for one year is vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes or insurance, as applicable.

4. Provides that NP borrowers will escrow funds for the payments of taxes if requested by FmHA. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. A borrower who is also indebted for a Farmer Program (FP) program loan will not be required to escrow.

5. Provides that FmHA will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the government's best interest.

The major issues in subpart J of part 1951 which are clarified, established, or vary from that contained in existing FmHA regulations and were included in the proposed rulemaking are as follows:

1. Reiterates and clarifies that NP loans are not eligible for program supervision or management, and NP debtors are not entitled to program benefits and entitlements such as interest credit, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance or appeal rights.

2. Establishes a nonrefundable application fee, which will change periodically, to process an application for NP credit. The application fee is exclusive of any required credit report fee. Initially, the fee will be set at \$100.

3. Establishes downpayment requirements which are based on the purchase price for a credit sale and the current market value or debt, whichever