animal metabolism studies were required to determine the likelihood of secondary residues in meat, fat, milk, poultry, and eggs. The animal metabolism studies were received at the Agency in September 1992 and placed into review. The Agency completed an evaluation of the animal metabolism studies in March 1993 and concluded that the nature of the residue in animals was tentatively adequately understood. For the purposes of this tolerance with an expiration date, the Agency determined that finite residues in animal commodities would be minimal from the use of lactofen on cotton, based on results of metabolism studies. However, for the proposed permanent tolerance, additional information was required. This included the following: (1) Further characterization of metabolites from animal metabolism studies; (2) Independent Method Evaluation and EPA Method Validation of the proposed analytical methodology if tolerances on animal commodities are required; (3) a ruminant feeding study; (4) An Independent Method Validation and EPA Method Validation of revised analytical methodology for cottonseed; and (5) revised product labeling. Information was submitted in September 1993 and, with the exception of the revised Section B which has undergone preliminary evaluation, are pending review by the Agency. Since Agency review has not been completed, it is inappropriate to establish a permanent tolerance at this time. Nevertheless, the Agency believes that the existing data support an extension of the time-limited tolerance to December 31, 1995. The data considered in support of the time-limited tolerance can be identified in the June 14, 1990 (55 FR 24084) **Federal Register.**

There are no pending regulatory actions against the registration of this pesticide. The pesticide is useful for the purpose for which this tolerance is sought. Adequate analytical methodology (gas chromatography) is available for enforcement purposes. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide residue enforcement when requested from: By mail, Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5805.

Based on the information cited above, the Agency has determined the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, the tolerance is continued as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "eonomically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 21, 1994.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.432, by revising paragraph (b), to read as follows:

§ 180.432 Lacotfen; tolerances for residues.

* * * * *

(b) A time-limited tolerance, set to expire December 31, 1993, is extended for 2 years and will now expire December 31, 1995, for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate) and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodity:

Commodity	Parts per million
Cottonseed	0.05

[FR Doc. 94-7369 Filed 3-29-94; 8:45 am]

BILLING CODE 6560-50-F

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1601, 1602, 1609, 1615, 1632, 1642, 1646, 1652

RIN 3206–AE67

Federal Employees Health Benefits Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that amend certain provisions of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The changes will more precisely reflect the needs of OPM in contracting for health benefits under the Federal Employees Health Benefits Program (FEHBP) and in the general administration of the FEHBP contracts.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On June 29, 1993, OPM published proposed regulations in the **Federal Register** (58 FR 34769) that would amend certain community rating and experience rating provisions of the FEHBAR. We received 36 comments, 28 from FEHBP community rated carriers, two from FEHBP experience rated carriers, two from organizations representing FEHBP health maintenance organizations (HMOs) and similar managed care systems, two from law firms representing a number of community rated FEHBP carriers, one from a law firm representing an association of Federal health organizations, and one from a Federal agency. We appreciate the observations and suggestions offered and have taken them into consideration in these regulations.

The majority of the comments were favorable toward OPM's efforts to more effectively administer the FEHBP. Many of the commenters expressed concerns, however, about the changes with respect to Similarly Sized Subscriber Groups (SSSGs) and the quality assurance program requirements proposed by OPM. A number of them offered suggestions as to how OPM might further clarify the regulations to mitigate these concerns.

The comments and recommendations received reflect the difficulty OPM has experienced in specifying explicit standards in regulation in these two areas. The conflicting comments and suggestions from the carriers have prompted us to reconsider our decision to establish explicit standards by regulation. Instead, OPM has decided to replace the standards with guiding principles and will provide carriers with specific criteria for SSSGs in the annual rate letters. In addition, OPM intends to furnish specific quality assurance standards prior to its FEHBP contract negotiations for the following contract year. This approach will foster competitiveness and commercial practices in the FEHBP by reflecting the latest developments in the insurance industry and will thereby allow OPM to utilize the most recent market mechanisms in the FEHBP.

This approach conforms to the principles of the Administration's National Performance Review (NPR) as well. A key element of the NPR is the simplification of government procurement regulations and processes, a shifting from rigid rules to guiding principles, and replacement of agency rules with policy directives and instructions, where appropriate. An important advantage to this approach is that OPM will no longer find its regulatory policies in these areas lagging behind insurance industry trends because both OPM and the carriers will have the flexibility to adjust quickly to current market conditions.

Pursuant to section 553(d)(3) of title 5 of the United States Code, OPM is issuing these regulations with an immediate effective date. The regulations are being made effective immediately so that they may be in place before the rate letters for the 1995 FEHBP contract year are mailed to the carriers.

The following will address the comments received and will clarify OPM's intent with respect to those portions of the regulations changed as well as those retained.

In the past, we have noted a general misunderstanding relating to OPM's objective in using SSSGs to verify the Federal group's rate. OPM's objective is to ensure that the Federal group's rate is equivalent to the SSSGs' rates, thereby reflecting any market advantages given to the SSSGs.

In the SUPPLEMENTARY INFORMATION section of the proposed regulations, OPM asserted that it may examine any aspect of a carrier's rating procedure to ensure that the carrier gives the Federal group an equitable rate. This statement troubled a number of commenters who expressed concern that, even where the carrier charges the Federal group a rate that is equivalent to that charged the SSSGs, it is OPM's practice to look beyond the SSSGs to determine whether the Federal group is entitled to any rate adjustment. They contend that OPM's regulations do not provide for any rate adjustment for the Federal group based on rates charged a group that is not an SSSG. One commenter interpreted the statement to mean that OPM will limit rates to the lowest amounts charged by an HMO to its largest groups.

We would like to clarify that OPM's detailed examination of a carrier's rating process is not an alternative procedure to identify SSSGs. OPM will examine the rating methodology of the SSSGs to ensure that it is consistent with that used for the Federal group. For example, if the carrier uses traditional community rating (TCR) or community rating by class (CRC) for the Federal group and the SSSGs, OPM will verify that the carrier based on the self-and-family rates for all three groups on the same underlying capitation rate and derived them by the same general procedure. If the carrier uses adjusted community rating (ACR) for all three groups, OPM will verify that the carrier derived the self-and-family rates for all three groups by the same general methodology.

We have revised the definition of SSSGs. The SSSGs are the two groups closest in size to the Federal group that meet the criteria specified in OPM's rate instructions. All groups are potentially SSSGs except those which the carrier rates by retrospective experience rating.

OPM does, however, reserve the right to examine the rate development of non-SSSG groups. We want to emphasize that the sole purpose of such analysis is to make certain that the Federal group's rates are equivalent to the SSSGs' rates. For example, if an SSSG had a special benefit (e.g., dental benefit) not included in the Federal group benefit package, OPM would compare what the carrier charged the SSSG with what it charged other groups for this benefit. The purpose would be to verify that the SSSG received no discount. Carriers need not be concerned that an OPM review of a commercial group makes it a potential SSSG.

One carrier wanted to know if health insurance purchasing cooperatives (HIPC) under state health care reform packages are excluded from consideration as SSSGs. OPM will consider all group not retrospectively experience rated as potential SSSGs. Assuming, then, that the group is not retrospectively experience rated, the size of the group in relation to the Federal group will be used to determine SSSGs. Since a HIPC negotiates rates on behalf of a group, if this group satisfies the size requirement, we would consider it to be an SSSG.

One carrier suggested that OPM should change the definition of the

SSSGs from one based on subscriber enrollment to one based on member enrollment. Basing the SSSGs on member enrollment is not practicable for the FEHBP because OPM does not have data on family members. The only reliable data available to OPM is the subscriber headcount. Consequently, OPM bases the SSSGs on subscriber enrollment.

One law firm stated that the carriers' evaluations should be presumed correct in reconciling benefit differences unless inconsistent application of such values can be demonstrated. The firm, as well as another organization representing HMOs, is concerned that the actuaries and auditors will determine the value of the same benefits differently. OPM understands the concern. Nevertheless, OPM would be acting irresponsibly if it presumed the carriers' evaluations are correct. The fact that the Office of Actuaries accepts a rate proposal does not guarantee that no errors in the overall rates or in a particular aspect of the proposal will be uncovered in audit. This is precisely why the annual rate instructions to the carriers specifically state that the rate proposals are subject to audit.

Ten community rated carriers and one law firm voiced concern about the requirement that the SSSGs be determined from enrollment data from the current contract year rather than data from the year preceding the contract year. They are concerned that the SSSGs may change as a result of enrollment changes between the date rate proposals are submitted and the date they are reconciled; that the HMO's target SSSGs may renew after the reconciliation date; or that they may not renew at all. They fear that the HMO may find itself out of compliance with the proposed SSSG requirements. They believe that reconciliations should look only at renewal dates already passed as of the time of reconciliation.

OPM explained in its 1993 rate instructions that, beginning with the 1993 rate year, the enrollment for SSSGs would correspond to the rate year. For example, for the 1993 rate year, the 1993 enrollment for SSSGs would be used. Therefore, carriers need not be concerned that "target" SSSGs may renew after the reconciliation date or that they may not renew at all. There are no longer any "target" SSSGs because, beginning with the 1993 rate year, carriers do not determine the SSSGs at the time of the proposal. A carrier now determines the SSSGs at the time it submits the reconciliation to OPM. It is at that time (usually around March of the rate year under consideration) that the carrier will compare the enrollment of its other groups to that of the Federal group.

We agree with the comment that reconciliations should look only at renewal dates that are already passed at the time of the reconciliation. OPM will address this question in the 1994 reconciliation instructions.

Seven community rated carriers believe OPM should retain the benefits similarity requirement. OPM has dropped the benefits similarity requirement because many carriers have found the phrase "substantially the same benefit package" vague. Future rate instructions will further define groups excluded from SSSG consideration. For example, we plan to exclude Medicaid groups, Medicare groups, and groups which have only a stand-alone benefit (e.g., dental benefits).

In the Supplementary Information section to the proposed regulations, OPM referred to the definition of SSSG and stated that the regulations authorize the use of Government groups as SSSGs, provided that such groups are community rated. We stated that some carriers have considered the provision optional and are excluding State and local government groups even though they meet the SSG requirements and are community rated. Four carriers and one law firm believe that HMOs should have an option, not a mandate, to include state or local government groups as SSSGs since state procurement laws often dictate multiple year rate guarantees and the HMO Act does not require them to be community rated. Another carrier commented that the regulations concerning governmental groups are already permissive, not mandatory, as evidenced by OPM's use of the word "may" in the current 1602.170–11(c). In fact, the term "may" was intended as authority for OPM to approve the use of Government groups as SSSGs if they are community rated and was not directed at the carriers. It was OPM's lack of clarity that caused the misunderstanding on the part of the carriers. OPM deleted this provision in the proposed and final regulations, because it is OPM's intention that government groups should not be treated differently from other groups provided for under 1602.170–11(a). Note that under the revised language of 1602.170–11, all groups except those rated by retrospective experience rating are potential SSSGs.

Several carriers raised questions specific to the proposed regulations that may not be relevant to future guidance issued by the Actuary. Consequently, we will not respond to them at this time. If carriers have specific questions when they receive the rate letter, then they should write or call OPM's Office of Actuaries for clarification.

One commenter wanted to know whether a carrier could community rate its SSSGs and use some other rating practices for some or all of its other groups. It also wanted clarification whether, if OPM determines the rates on the two SSSGs are comparable, the carriers could use different rating methods or different rates with its other groups, including a discount. If the rating method for an SSSG differs from that used for the Federal group, OPM would review the SSSG rate to ensure that the rating method had been properly applied and that no discounts had been given to the group. As long as the Federal group rates are equivalent to the SSSG rates, OPM is not concerned with the plan's rating methods for its other groups.

Two carriers noted that the Federal HMO regulations issued by HHS permit discounts (up to 5%) for groups which give the HMO special administrative or marketing advantages and asked whether OPM would recognize such discounts, or whether the discounts constitute defective community rating. We recognize the legitimacy of banding for administrative or marketing advantages. Any adjustments for these reasons should be disclosed to OPM and provided to the Federal group, if applicable.

A number of carriers were confused by OPM's statement in the Supplementary Information section of the proposed regulations that a carrier must give the Federal group the lowest discount given to any SSSG. The confusion stemmed from 1615.802(b)(3), which states that a downward price adjustment will be made if OPM determines that the rate for one or both of the SSSGs is lower than that which would be obtained by basing the rate on the plan's community rate and further provides that such adjustments will be based on the lowest rate given to the SSSG. This language was never intended to require the lowest rate. Rather, it was meant to require the lowest rate derived using SSSG methodology applied to the Federal group. We have revised the language of the regulations to clarify our intent.

One carrier believes that OPM is no longer allowing experience rating of HMOs. In fact, the reverse is true. Our regulations have moved away from a strict interpretation of community rating over the years. OPM is not eliminating experience rating by HMOs. On the contrary, we allow prospective experience rating for community rated plans in the form of Adjusted

Community Rating. We also allow non-community rated HMOs to use retrospective experience rating if they satisfy certain reporting requirements.

Nine respondents commented that the effective date of the regulations should be prospective. They argue that a retroactive effective date potentially places contractors in violation of their Certificates of Accurate Pricing for the 1993 contract year. OPM agrees that the effective date should be prospective. These regulations will be in effect beginning with the 1994 rate reconciliation.

In the proposed regulation, OPM adapted the FAR debarment certification at 52.209–5 to fit the FEHBP. In this certification, the carrier affirms that, among other things, neither it nor any of its "principles" is presently debarred, suspended, or declared ineligible for the award of contracts by any Federal agency. One plan and one association of HMOs wanted to know the equivalent of a "principal" (referred to in the certification) in a managed care company. The term "principal" is defined in the certification as "officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity. * * *" We will not cite specific positions in managed care or other facilities equivalent to these positions because each organization's structure and responsibilities are unique.

One respondent wanted to know if reliance solely on OPM's Inspector General-provided information on debarred providers would satisfy the ordinary course of business dealings standard in paragraph (e) of the proposed certification. Carriers cannot rely solely on debarred provider lists. Such lists include only health care providers, not non-provider contractors, such as printing companies.

The proposed regulations added 52.209–6, "Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment," as a mandatory clause for all FEHBP carriers. This clause applies to all of the carrier's subcontractors. Carriers should note that the definition of subcontractor at 1602.170–12 excludes providers of direct medical services or supplies pursuant to the carrier's health benefits plan. To obtain information on whether or not a subcontractor is debarred, the carrier should refer to FAR 9.404(d).

Under the proposed rules and pursuant to paragraph (d) of the certification at FAR 52.209–5, the contractor is not required to set up a system of records to determine whether each principal in the organization is debarred or suspended. The fact that a system of records is not required for debarred contractors and their principals under the FAR, however, does not necessarily mean that no system of records is needed to track debarred health care providers under 5 CFR 970. The two debarment procedures fall under different statutory provisions and the issue under the latter is the payment of these individuals rather than the notification of the debarment or suspension status of the carrier's principals. Nevertheless, OPM expects that neither the debarment procedures under the FAR nor those under 5 CFR 970 will require carriers to establish an additional system of records. Carriers should be able to set up debarment procedures for contractors, subcontractors, and providers within their existing systems.

The proposed regulations prescribed novation and change of name agreements for FEHBP carriers (1642.12). Four commenters believe that OPM's provision authorizing it to terminate the contract if the carrier fails to submit the properly completed and signed novation agreement in a timely manner is unduly harsh.

Transfer of Government contracts is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract when it is in the Government's best interest. When it is not in the Government's best interest to do so, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for default should the original contractor not perform. These provisions are set out in FAR 43.1204 (a) and (b) and are applicable to all Government contractors. Thus, in FEHBAR subpart 1642.12, OPM is proposing no harsher standard for FEHBP carriers than is expected of other Government contractors. OPM simply intends to apply the procedures required under the FAR. Thus, in order to protect the interests of all FEHBP enrollees and to comply with the statute and regulations prohibiting transfer of a Government contract, OPM must obtain the novation agreement in a timely manner.

One of the commenters noted that OPM already has authority to discipline carriers for repeated failure to comply with OPM instructions and directives at 1609.701(c)(4), and those provisions have a range of remedies in proportion to the seriousness of the action, only the most stringent of which is termination of the contract. Because Government contracts cannot be transferred, a carrier's failure to submit a novation agreement is not on the same level as an OPM instruction or directive. There is no less stringent remedy than contract termination for failure to submit a Novation Agreement.

Three carriers and one law firm requested that OPM define the timeliness parameters in the novation and change of name agreements. One carrier asked that OPM address transfer of payments to the new company or under the new name. It believes that OPM's change in the direction of premiums should follow more closely upon the carrier's submission of the agreement to OPM.

Consistent with past OPM practice, we consider timely to be 30 calendar days. What is considered timely could vary, however, depending on the circumstances in a particular situation. OPM will attempt to accelerate the review process. Nevertheless, some delay may be unavoidable. Submission of paperwork does not necessarily mean automatic acceptance of a novation or change of name agreement, because the agreement must be reviewed by OPM's counsel for legal sufficiency, in accordance with FAR 42.1203(d).

Nine carriers believe that the proposed FEHBP-specific quality assurance policies and procedures [Part 1646] would unnecessarily burden carriers if the plan is already subject to Federal or State quality assurance requirements. A number of the carriers recommended that OPM accept the National Committee for Quality Assurance (NCQA) Health Plan Employer Data and Information Set (HEDIS) standardized performance reports as an acceptable means of meeting the FEHBP contractual responsibility. OPM agrees with the carries in principle and has taken a number of steps in this director. We have withdrawn the proposed clause at 1646.246–70 relating to quality assurance/performance standards. Thus, the audit inspection clause currently at 1652.246–70 will remain in effect. We have amended Part 1646 to provide that OPM will issue specific performance standards for the FEHBP contracts. Finally, we will inform the carriers which standards apply prior to annual contract negotiations.

In the future, OPM will issue FEHBP-specific standards which we will benchmark against the best performance standards in the insurance industry, consistent with the NPR. All performance standards will be evaluated against the same benchmark with the same results. We will consider a variety of standards, including those suggested to us in the written comments to the proposed regulations.

Pursuant to section 553(d) of title 5 of the U.S. Code, I find that good cause exists for making these regulations effective immediately upon publication so that they may be used during the 1995 FEHBP contract negotiations.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect administrative procedures used by OPM and the FEHBP carriers.

List of Subjects in 48 CFR Parts 1601, 1602, 1609, 1615, 1632, 1642, 1646, and 1652

Administrative practice and procedure, Government employees. Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending chapter 16 of Title 48, Code of Federal Regulations, as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citations for 48 CFR parts 1601, 1602, 1609, 1615, 1632, 1646, and 1652 continue to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In section 1601.102, the existing paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 1601.102 Authority.

* * * * *

(b) The FEHBAR does not replace or incorporate regulations found at 5 CFR part 890, which provides the substantive policy guidance for administration of the FEHBP under 5 U.S.C. Chapter 89. The following is the order of precedence in interpreting a contract provision under the FEHBP:

(1) 5 U.S.C. Chapter 89;

(2) 5 CFR part 890;

(3) 48 CFR Chapters 1 and 16;

(4) The FEHBP contract.

PART 1602—DEFINITION OF WORDS AND TERMS

3. Section 1602.170–11, is revised to read as follows:

§ 1602.170–11 Similarly sized subscriber groups.

Similarly sized subscriber groups (SSSGs) are a comprehensive medical plan's two employer groups that:

(a) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(b) Use any rating method other than retrospective experience rating; and,

(c) Meet the criteria specified in the rate instructions issued by OPM.

PART 1609—CONTRACTOR QUALIFICATIONS

4. In part 1609, subpart 1609.4 is added; section 1609.701 in subpart 1609.70 is redesignated as 1609.7001, and paragraphs (a)(7), (b)(7), and (b)(8) are added to read as follows:

Subpart 1609.4—Debarment, Suspension, and Ineligibility

1609.470 Notification of Debarment, Suspension, and Ineligibility.

(FAR) 48 CFR, part 9, subpart 9.4 is supplemented as set out in the certification required in 1609.471 by converting the FAR "offeror's" certification at (FAR) 48 CFR 52.209–5 into a carrier's certification. This change reflects the FEHBP's statutory exemption from competitive bidding (5 U.S.C. 8902), which obviates the issuance of solicitations.

1609.471 Contractor certification.

All FEHBP carriers and applicant carriers are required to submit the following certification. Applicant carriers must submit the certification prior to OPM's determination on the application for approval to participate in the FEHBP. Current carriers must submit the certification once, along with their benefit and rate proposals for the 1995 contract year.

Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

The Carrier certifies, to the best of its knowledge and belief, that—

(a) The Carrier and/or any of its Principals—

(1) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(3) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(4) The Carrier has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(b) *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Carrier subject to prosecution under section 1001, title 18, United States Code.

(c) The Carrier shall provide immediate written notice to the Contracting Officer if, at any time, the Carrier learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(d) A Carrier's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Carrier's failure to provide such additional information as requested by the Contracting Officer, will be considered in connection with a determination of the Carrier's responsibility under subpart 1609.70, Minimum Standards for Health Benefits Carriers.

(e) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Carrier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(f) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer. If it is later determined that the Carrier knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

Carrier Name: ______________________

____

Name of Chief Executive Officer

Date signed: ______________________

(End of Certificate)

1609.7001 Minimum standards for health benefits carriers.

(a) * * *

(7) It must timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 1642.12 of this chapter.

(b) * * *

(7) Application of performance standards for assuring contract quality as required by 1646.270(d).

(8) Establishment and maintenance of a system of internal control that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses are in compliance with legal, regulatory, and contractual guidelines;

(ii) FEHB funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and,

(iii) Data are accurately and fairly disclosed in all reports required by OPM.

* * * * *

5. In section 1615.802, paragraph (a) is redesignated as paragraph (a)(1) and revised, paragraph (b)(3) is revised, a new paragraph (b)(4) is added, paragraph (c) is redesignated as paragraph (a)(2) and republished, and section 1615.804–70 is revised to read as follows:

Subpart 1615.8—Price Negotiation

1615.802 Policy.

* * * * *

(a)(1) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(2) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based on cost analysis.

(b) * * *

(3) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments will be based on the lowest rates determined for the Federal group using the methodology (including discounts) for the two SSSGs.

(4) FEHBP community rated carriers shall comply with SSSG criteria provided annually by OPM in the rate instructions for the applicable contract period.

1615.804–70 Certificate of accurate pricing for community rated plans.

The contracting officer shall require a carrier that rates using a community rate as defined by FEHBAR 1602.170–2 to execute the Certificate of Accurate Pricing for Community Rated Plans contained in this section unless the carrier has been exempted from filing certified cost or pricing data pursuant to 1615.802(b)(1). The carrier shall submit the Certificate to OPM at the time it submits its rate reconciliation.

Certificate of Accurate Pricing for Community Rated Plans

This is to certify that, to the best of my knowledge and belief: (1) the cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee in support of the ______* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract, and are accurate, complete, and current as of the date this certificate is executed; and (2) The FEHBP rates were developed in a manner consistent with the methodology used to rate the plan's similarly sized subscriber groups and approved by OPM.

Firm: ______________________
Name: ______________________
Title: ______________________
Signature: ______________________
Date of Execution: ______________________

(End of Certificate)

PART 1632—CONTRACT FINANCING

6. In Subpart 1632.6, section 1632.617 is revised to read as follows:

1632.617 Contract clause.

The clause at (FAR) 48 CFR 52.232–17 will be modified in all FEHBP contracts to exclude the words "net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)."

Subchapter G—Contract Management

7. Add a heading for Subchapter G immediately after part 1633 to read as follows:

Subchapter G—Contract Management

8. In Subchapter G, Part 1642 is added to read as follows:

PART 1642—CONTRACT ADMINISTRATION

Subpart 1642.12—Novation and Change-of-Name Agreements

Subpart 1642-70—Management Agreement (In Lieu of Novation Agreement)

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

Subpart 1642.12—Novation and Change-of-Name Agreements

1642.1201 Definitions.

The definitions at (FAR) 48 CFR 42.1201 shall have the same meaning for this subpart.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

(a) (FAR) 48 CFR 42.1204 shall be implemented as provided in this section. The contracting officer shall insert the following agreement in all FEHBP contracts for use when the contractor's assets or the entire portion of the assets pertinent to the performance of the contract, as determined by the Government, are transferred.

Novation Agreement

The *(insert corporate name)* (Transferor), a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city, state)*; the *(insert corporate name)* (Transferee), (if appropriate add "formerly known as the ______ Corporation") a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city)*; and the UNITED STATES OF AMERICA (Government) enter into this Agreement effective *(insert date transfer of assets became effective under applicable State law)*.

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number ______ with the Transferor. The term *contracts*, as used in this Agreement, means the contract cited in this paragraph and all other contracts and purchase orders, including any and all amendments and modifications made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) As of ____ 19__ (insert date transfer of assets became effective under applicable State law), the Transferor has transferred to the Transferee all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of a(an) *(insert term describing the legal transaction*

involved) between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(4) The Transferee has assumed all obligations and liabilities of the Transferor pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(5) The Transferee is in a position to fully perform all obligations that may exist under the contract.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the transfer in paragraph (a)(1) has been filed with the Government.

(8) [If applicable:] A certificate dated ____, 19__, signed by the Secretary of State of (*insert State*), to the effect that the corporate name of (*insert old corporate name*) was changed to (*insert new corporate name*) on ____, 19__, has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government or the Federal Employees Health Benefits Fund that it now has or may have in the future in connection with the contract.

(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor pertinent to the contract, as determined by OPM, as if the Transferee were the original party to the contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contract as if the Transferee were the original party to the contract. Following the effective date of this Agreement, the terms *Carrier* and *Contractor* as used in the contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contract, shall be considered to have discharged those parts of the Government's obligations under the contract. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should this contract be modified under its terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement effective (*insert the date transfer of assets became effective under applicable State law*).

UNITED STATES OF AMERICA,

By ________ Date ________

Title ________

(Enter Transferor's name)

By ________ Date ________

Title ________

(Corporate Seal)

(Enter Transferee's name)

By ________

Title ________

(Corporate Seal)

Certificate

I, ______, certify that I am the Secretary of (*insert name of Transferor*); that ______, who signed this Agreement for this corporation, was then ______ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ______ day of ______, 19____.

By ________

(Corporate Seal)

Certificate

I, ______, certify that I am the Secretary of (insert name of Transferee); that ______, who signed this Agreement for this corporation, was then ______ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ______ day of ______ 19__.

By ________________

(Corporate Seal)

(End of Agreement)

(b) Failure to submit the properly completed and signed Novation Agreement in a timely manner shall be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

(c) The Contracting Officer shall terminate the contract if it is determined not to be in the Government's interest to recognize a successor in interest to the contract. The effective date will be decided by the Contracting Officer after considering the best interests of FEHBP enrollees.

1642.1205 Agreement to recognize carrier's change of name.

(a) (FAR) 42.1205 shall be implemented as provided in this section. The Contracting Officer shall insert the following Agreement in all FEHBP contracts for use when the carrier changes its name and the Government's and contractor's rights and obligations remain unaffected.

Change-of-Name Agreement

The (insert new Carrier name), a corporation duly organized and existing under the laws of (insert State), and the UNITED STATES OF AMERICA (Government), enter into this Agreement effective (insert date when the change of name became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number ______ with the (insert old Carrier name). The term *contracts* as used in this Agreement means the contract cited in this paragraph and all other contracts and purchase orders and all modifications thereto made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the OPM or the Carrier has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The (insert old Carrier name), by an amendment to its certificate of incorporation, dated ____, 19__, has changed its corporate name to (insert new Carrier name).

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and the Carrier under the contract are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

(1) The contract is amended by substituting the name "(insert new Carrier name)" for the name "(insert old Carrier name)" wherever it appears in the contract; and

(2) Each party has executed this Agreement effective the day and year stated in paragraph (a)(2).

UNITED STATES OF AMERICA,

________ Date ________ ________

Title ________________

(Enter new Carrier name)

By ________ Date ________

Title ______________________

(Corporate Seal)

Certificate

I, ______, certify that I am the Secretary of (insert new Carrier name); that ______, who signed this Agreement for this corporation, was then (insert position held) of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ____ day of ____ 19__.

By ______________________

(Corporate Seal)

(End of Agreement)

(b) Failure to submit the properly completed and signed Change-of-Name Agreement in a timely manner may be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

Subpart 1642–70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

When it is in the best interest of FEHBP enrollees to continue a contract for an interim period after the carrier discontinues its operations and has entered into a Purchase and Sale Agreement (or other descriptive term), but before a successor in interest has been recognized by OPM, the carrier may submit for OPM approval a Management Agreement that enables it to continue a contract through an agreement with a third party to administer the day-to-day performance of the contract. Examples of situations in which a Management Agreement may be accepted by OPM are:

(a) When a transfer of assets does not meet the criteria for a novation;

(b) While a request for a novation is pending;

(c) While awaiting a decision on a request for a novation;

(d) As an interim measure, when the timing of a transfer of assets or the timing of a carrier's withdrawal make administration of the contract inconvenient;

(e) When it is not in the interests of the Government to either recognize a successor in interest or to immediately terminate the existing FEHBP contract.

PART 1646—QUALITY ASSURANCE

9. In part 1646, subpart 1646.2 and the title for subpart 1646.3 are added to read as follows:

Subpart 1646.2—Contract Quality Requirements

Sec.

1646.270 General.

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1646.2—Contract Quality Requirements

1646.270 General.

(a) This section prescribes general policies and procedures to ensure that services acquired under the FEHBP contract conform to the contract's quality requirements.

(b) OPM shall periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. After the initial review, subsequent reviews may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

(c) OPM will issue specific performance standards for the FEHBP contracts and will inform carriers of the applicable performance standards prior to negotiations for the contract year. OPM will benchmark its standards against standards generally accepted in the insurance industry. The contracting officer may authorize nationally recognized standards to be used to fulfill this requirement.

(d) FEHBP carriers shall comply with the performance standards issued under paragraph (c) of this section.

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

* * * * *

PART 1652—CONTRACT CLAUSES

10. In section 1652.000, FAR clauses 52.230–3, 52.230–4, 52.230–5 and clause dates are removed and the following FAR clauses are added in numerical sequence as follows:

1652.000 Applicable clauses.

Section and Clause Title

* * * * *

52.203–7 Anti-Kickback Procedures.

52.203–9 Requirement for Certificate of Procurement Integrity—Modification.

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.

* * * * *

52.223–6 Drug-Free Workplace.

* * * * *

52.230–2 Cost Accounting Standards.

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

52.230–5 Administration of Cost Accounting Standards.

* * * * *

52.242–13 Bankruptcy.

* * * * *

52.249–2 Termination for Convenience of the Government (Fixed-Price).

52.249–8 Default (Fixed-Price Supply and Service).

* * * * *

12. In subpart 1652.3, section 1652.370, the full entries in the FEHBP clause matrix for FAR clauses 52.230–3, 52.230–4 and 52.230–5 are removed and the following FAR clause references are added in numerical sequence to read as follows:

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the Matrix.

* * * * *

FEHBP CLAUSE MATRIX

* * * * *

Clause No.	Text reference	Title	Use status	Use with contracts based on: Cost analysis	Use with contracts based on: Price analysis
*	*	*	*	*	*
FAR 52.203–9	FAR 3.104–10(b)	Requirement for Certificate of Procurement Integrity—Modification.	M	T	T
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T

Clause No.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
*	*	*	*	*	*
FAR 52.209-6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
*	*	*	*	*	*
FAR 52.215-27	FAR 15.804-8(e)	Termination of Defined Benefit Pension Plans	M	T	T
*	*	*	*	*	*
FAR 52.215-39	FAR 15.804-8(f)	Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).	M	T	T
*	*	*	*	*	*
FAR 52.222-1	FAR 22.103-5(a)	Notice to the Government of Labor Disputes	M	T	T
*	*	*	*	*	*
FAR 52.230-2	FAR 30.201-4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230-3	FAR 30.201-4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230-5	FAR 30.201-4(d)(1)	Administration of Cost Accounting Standards	A	T	T
*	*	*	*	*	*
FAR 52.242-13	FAR 42.903	Bankruptcy	M	T	T
*	*	*	*	*	*
FAR 52.249-2	FAR 49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price).	M	T	T
FAR 52.249-8	FAR 49.504(a)(1)	Default (Fixed-Price Supply and Service)	M	T	T

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BILLING CODE 6325-01-M

Proposed Rules

Federal Register
Vol. 59, No. 61
Wednesday, March 30, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

RIN 0575–AB70

Removal of the Prohibition Against Charging Interest on Interest on FmHA Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its guaranteed farmer programs loan making and servicing regulations to remove the restriction against lenders charging interest on interest when restructuring loans. The intended effect is to eliminate barriers which prevent lenders from restructuring loans of delinquent guaranteed borrowers.

DATES: Written comments must be submitted on or before April 14, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steven K. Ford, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5424, 14th and Independence Avenue, SW., Washington, DC. 20250–0700, Telephone (202) 690–0451.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action." Based on information compiled by the Department, OMB has determined that this proposed rule: (1) Would alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (2) is a significant public policy issue as related to the direction of the guaranteed loan program.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR part 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), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan 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:

10.406—Farm Operating Loans.
10.407—Farm Ownership 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 this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0024 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection requirement from those approved by OMB.

Discussion of Proposed Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment not withstanding the exemption of 5 U.S.C. 553 with respect to such rules. FmHA is publishing this proposed rule with a 15-day comment period. This proposed rule relieves the restriction prohibiting lenders from charging interest on interest when restructuring guaranteed Farmer Programs loans. Due to the flooding in the Midwest and the drought in the Southeast, several farmers have experienced substantial reduction in income and will be unable to make their annual payments on Guaranteed loans. By permitting lenders to capitalize interest when restructuring these loans, the loans will be more profitable and lenders will be less resistant to rescheduling or reamortizing these loans. This will allow the farmers to continue their operation and avoid liquidation. Therefore, the Agency has concluded that the need to provide immediate assistance to farmers who have suffered severe production and physical losses as a result of natural disasters also justifies the shortened comment period under 5 U.S.C. 553 (d).

Lenders participating in the Guaranteed Loan Program have been reluctant to restructure the loans of delinquent guaranteed borrowers because of restrictive regulatory requirements. FmHA requires lenders to set aside the accrued interest portion of loans that are being restructured. Interest is only accrued on the outstanding principal.

The restriction prohibiting lenders from charging interest on interest was originally included in the regulations to make the Guaranteed Program consistent with the Direct loan program. In the past, FmHA could not capitalize interest that was not more than 90 days past due. Due to the passage of the Food, Agriculture, Conservation and

Trade Act of 1990 (Pub. L. 101–624), this is no longer a restriction for Direct loans. The restriction, therefore, is unique to the Guaranteed program and should be removed.

This practice also is contrary to standard industry practice. Lenders normally capitalize the outstanding interest portion of the loan and reschedule or reamortize the payments based on the new principal amount. FmHA's restriction on capitalizing interest necessitates a unique treatment for guaranteed loans with additional bookkeeping efforts. It also reduces the lender's return on the guaranteed loans.

FmHA proposes to remove the restriction prohibiting lenders from capitalizing interest on guaranteed loans when restructuring. By removing this restriction, lenders will no longer be required to maintain a separate accounting system for the accrued interest when a delinquent loan is restructured. This separate system is administratively expensive for lenders to maintain; therefore, lenders have been reluctant to restructure loans.

By removing this restriction, FmHA will pay an additional amount in loss claims in cases where the lender has restructured the loan and capitalized the interest. FmHA estimates that the increase in loss payments should be limited to 1 percent of the current loss payment level.

Lenders will also be able to use their standard notes without modification. Some lenders customarily charge borrowers interest on delinquent interest as a late payment fee. FmHA requires this clause to be removed by modifying the note or attaching an allonge. The proposed change will permit lenders to charge late payment fees that are customary for their non-guaranteed loans; however, it will not change 7 CFR part 1980, subpart A, Section 1980.22 which prohibits these charges from being covered by the guarantee. Any other capitalization of interest when restructuring will be permitted, and will be covered by the guarantee, providing the interest and other charges do not exceed those charged to the lenders' non-guaranteed farm customers.

This change will only apply to Farmer Program Guaranteed loans, since it is intended to respond to farmers' reduction in income and agricultural lenders reluctance to restructure guaranteed loans without capitalizing interest. Similar hardships have not been identified in the Housing or Business and Industry programs.

This revision will also reduce the difference in the profitability of guaranteed loans compared with the lenders' non-guaranteed loans. Lenders will be more willing to restructure the loans of delinquent guaranteed borrowers instead of liquidating the security. While some borrowers will pay more after their loans are restructured, many more borrowers will be able to continue farming with restructured loans.

The revision will apply to new loans made as well as existing guaranteed loans. Forms FmHA 449–34, "Loan Note Guarantee," FmHA 1980–27, "Contract of Guarantee (Line of Credit)," and FmHA 1980–38, "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government," executed for previous loans, contain prohibitions against charging interest on interest. Since removing this restriction will be to the lenders' benefit, FmHA proposes to permit lenders to capitalize interest when restructuring guaranteed loans. Thus, when FmHA concurs with the restructuring plan, the County Supervisor will provide the lender with an attachment to these forms modifying the restriction in cases of restructuring within statutory loan limits, and setting any new principal and guaranteed amounts. These forms will be amended accordingly for new guaranteed loans, but an attachment will be needed at restructuring to identify any new principal and guaranteed amounts which exceed the amounts listed on the guaranteed loan documents.

The Agency also proposes to eliminate the requirement that principal payments be made which are at least equal to the amount of the depreciation of the security. It is unrealistic to expect that a farmer in need of restructuring could make such a principal payment. For example, if a loan with a $100,000 outstanding balance, and $400,000 of security is restructured, the borrower currently must reduce the principal by $40,000 (assuming the security depreciates at 10 percent per year). This requirement has proven to be a hindrance to necessary loan restructuring.

The principal reduction requirement was originally adopted along with the requirement that Guaranteed loans be fully secured to be restructured. In 1989, FmHA removed the requirement that loans be secured to receive restructuring. There may be situations where the loan will not be fully secured; however, the risk to the agency is minimized by other requirements for restructuring, such as demonstrating a feasible plan, and restricting the number of years over which a loan may be rescheduled/reamortized.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Loan Programs—Business and Industry—Rural development assistance, Loan programs—Housing and Community development.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 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 and 2.70.

Subpart A—General

2. Section 1980.11 is revised to read as follows:

§ 1980.11 Full faith and credit.

The Loan Note Guarantee and Contract of Guarantee constitute obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. Except in the case of Farmer Program loans, a note which provides for the capitalization of interest as a result of restructuring the loan and not exceeding statutory loan limits or as a customary late payment fee may be guaranteed, and any Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to or relating to such note is not void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee or Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 1980–15. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of debt for repurchase.

3. Section 1980.20 (a) introductory text is revised to read as follows:

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be advised in writing on Form FmHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of subpart E of this part. The maximum percentage of guarantee for DARBE guaranteed loans in excess of $2,000,000 will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed $2,000,000. The maximum percentage of guarantee for all other loans covered by this section will be 90 percent. Also, except in regards to D&D and DARBE guaranteed loans (see subpart E of this part) or as modified for Farmer Programs guaranteed loans (see subpart B of this part), the maximum loss covered by Form FmHA 449–34 or Form FmHA 1980–27 can never exceed the lesser of:

* * * * *

4. Section 1980.83 (b) is amended by adding two new entries at the end of the table to read as follows:

§ 1980.83 FmHA Forms.

* * * * *

(b) * * *

FmHA

Form No.	Title of form	Purpose and code [1]
1980–84.	Modification of New Contract Relating to Farmer Programs Guaranteed Loan/Line of Credit.	Used to permit capitalization of interest. (2)
1980–85.	Modification of Existing Contract Relating to Farmer Programs Guaranteed Loan/Line of Credit.	Used to permit capitalization of interest. (2)

[1] Code: * * * (2) FmHA and lender use, * * *

5. Appendix A to Subpart A is revised to read as follows:

Appendix A to Subpart A

USDA–FmHA
Form FmHA 449–34
(Rev. 4–94)
Type of Loan: _________

Loan Note Guarantee

Applicable 7 C.F.R. Part 1980
Subpart

____
Borrower
____
Lender
____
Lender's Address
____
State
____
County
____
Date of Note
____
FmHA Loan Identification Number
____
Lender's IRS ID Tax Number
____
Principal Amount of Loan
____

The guaranteed portion of the loan is $_________ which is_________ (_________%) percent of a loan principal. The principal amount of loan is evidenced by __________ note(s) includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _________ in the face amount of $_______ and is number _______ of _______.

Lender's identifying No.	Face amount	Percent of total face amount	Amount guaranteed
	$	%	$
Total	$_______	100%	$_______

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

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion and any capitalized interest on such portion resulting from the restructuring of a Guaranteed Farmer Programs loan and not exceeding statutory loan limits.

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

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

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

b. Any loan subsidy due and owing, and

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

d. and, Capitalized interest on such portion resulting from the restructuring of a Guaranteed Farmer Programs loan and not exceeding statutory loan limits, or

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

any capitalized interest resulting from the restructuring of a Guaranteed Farmer Programs loan and not exceeding statutory loan limits.

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

Definition of Holder

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

Definition of Lender

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

Conditions of Guarantee

1. Loan Servicing

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclose action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities

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

3. Full Faith and Credit

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

4. Rights and Liabilities

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

5. Payments

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

6. Protective Advances

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

7. Repurchase by Lender

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

8. FmHA Purchase

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

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

9. Lender's Obligation

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

10. Repurchase by Lender for Servicing

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

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

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

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

11. Custody of Unguaranteed Portion

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

12. When Guarantee Terminates

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

13. Settlement

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

14. Loan Subsidy

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

15. Interest Capitalization

In the case of Farmer Programs loans, the Lender/Holder(s) may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the principal amount of the loan listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this Loan Note Guarantee. Such capitalized interest will be covered by this Loan Note Guarantee. References to "principal and interest" and "principal advanced" herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Guaranteed Farmer Programs loan and not exceeding statutory loan limits. The capitalization of interest via a late payment fee also is permissible if customary for the lender's non-guaranteed loans. The late fees, however, will not be covered by the guarantee.

16. Notices

All notices will be initiated through the FmHA ____________ for ____________ (State) with mailing address at the day of this instrument:

____

____

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

UNITED STATES OF AMERICA
Farmers Home Administration

By: ______________________________
Title: ______________________________

____

(Date)

Assumption Agreement by __________ dated __________, 19 ______

Assumption Agreement by __________ dated __________, 19 ______

6. Appendix C to subpart A is revised to read as follows:

Position 5

Appendix C to Subpart A

USDA-FmHA
Form Approved
OMB NO. 0575–0024
Form FmHA 449–36
(Rev. 4–94)

Assignment Guarantee Agreement

Type of Loan: ______________________________
Applicable 7 CFR Part 1980 Subpart __________
FmHA Loan Identification Number __________

____

of ______________________________

(Lender) has made a loan to ______________ in the principal amount of $__________ as evidenced by a note(s) dated __________. The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee (Form FmHA 449–34) with the Lender applicable to such loan to guarantee the loan not to exceed __________ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon and any capitalized interest, resulting from the restructuring of a Guaranteed Farmer Programs loan and not exceeding statutory loan limits, as provided therein.

____

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

Now, Therefore, the parties agree:

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

2. Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The Lender will receive all payments on account of principal of, or interest (including any loan subsidy and any capitalized interest, resulting from the restructuring of a Guaranteed Farmer Programs loan and not exceeding statutory loan limits) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only the Lender's servicing fee.

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

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

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

limits, or as a customary late payment fee may be guaranteed, and any Assignment Guarantee Agreement attached to or related to such note is not void.

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

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

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

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

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

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

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

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

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

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

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

13. Interest Capitalization. In the case of Farmer Programs loans, the Lender may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the line of credit listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this agreement. Such capitalized interest will be covered by this Assignment Guarantee Agreement. References to principal and interest herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Farmer Programs loan and not exceeding statutory loan limits. The capitalization of interest via a late payment fee also is permissible if customary for the lender's non-guaranteed loans. The late fees, however, will not be covered by the guarantee.

14. Notices. All notices and actions will be initiated through the FmHA ________ for ________ (state) with mailing address at the date of this assignment: ________

Dated this ________ day ________, 19 ____.

Attest:

(Seal)

Attest:

(Seal)

Address: ________

Lender:

Address:

By ________

Title ________

Holder:

Address:

By ________

Title ________

UNITED STATES OF AMERICA

Farmers Home Administration

By ________

Title ________

7. Appendix D to Subpart A is revised to read as follows:

Appendix D to Subpart A

USDA-FmHA
Form FmHA 1980–27
(Rev. 4–94)

Contract of Guarantee

(Line of Credit)

Lender
Lender's IRS Tax No.
Lender's Address
Borrower's Name and Address
Cont/Alt 4

Type of Loan
☐ OL ☐☐☐ EL ☐ or ☐ ☐ EE
Cont/Alt 4
Case No.
State
County
Date of Line of Credit Agreement/Note
Line of Credit Ceiling $

The guaranteed portion of this line of credit is ________ % of the principal balance owed at any one time on advances made within an approved line of credit by the above-named Lender to the above-named Borrower.

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (P.L. 93–357), as amended, or the Emergency Agricultural Credit Adjustment Act of 1978 (P.L. 95–334) agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1. or 2. below:

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

a. Principal and interest indebtedness as evidenced by said line of credit agreement(s) (and note(s), if any exist) or by assumption agreement(s), and any capitalized interest on such portion resulting from the restructuring of an Operating loan and not exceeding statutory loan limits, and

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

2. The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s), and any interest due thereon, including any capitalized interest on such portion resulting from the restructuring of an Operating loan and not exceeding statutory loan limits. If an Operating Loan Line of Credit is involved, advances under that line of credit must be made within three years (five for Certified Lenders) from the date of this Contract. Advances made after that date will not be covered by this Contract. If FmHA conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Conditions of Guarantee

1. Line of Credit Servicing

Lender will be responsible for servicing the entire line of credit, and Lender will remain mortgage and/or secured party of record. The Lender agrees that, if liquidation of the account becomes imminent, the Lender, will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities

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

3. Full Faith and Credit

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. If the line of credit agreement or note to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. However, in the case of Farmer Programs loans, the capitalization of interest when restructuring loans and through the charging of customary late fees will not void this Contract of Guarantee.

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

4. Protective Advances

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the extent as provided in this Contract of Guarantee.

5. Custody of Unguaranteed Portion

The Lender may retain or sell the unguaranteed portion of the line of credit only through participation. Participation, as used in this instrument, means the sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note if one exists) collateral securing the line of credit and all responsibility for servicing and liquidation of the line of credit.

6. When Guarantee Terminates

This Contract of Guarantee will terminate automatically (a) upon full payment of the guaranteed line of credit occurring after the advance period has expired; or (b) upon full payment of any loss obligation under this Contract, or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Contract is returned to FmHA to be cancelled.

7. Settlement

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

8. Interest Capitalization

In the case of Operating loans, the Lender may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the line of credit listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this Contract of Guarantee. Such capitalized interest will be covered by this Contract of Guarantee. References to principal and interest herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of an Operating loan and not exceeding statutory loan limits. The capitalization of interest via a late payment fee also is permissible if customary for the lender's non-guaranteed loans. The late fees, however, will not be covered by the guarantee.

9. Notices

All notices and actions will be initiated through the FmHA County Supervisor for __________ (County) __________ (State) with mailing address at the date of this instrument:

UNITED STATES OF AMERICA
Farmers Home Administration
By: ____________________

Title: ______________________

____

(Date)

Assumption Agreement by __________ dated __________, 19 ______

Assumption Agreement by __________ dated __________, 19 ______

8. Appendix E to subpart A is revised to read as follows:

Appendix E to Subpart A

Form Approved OMB No. 0575–0079
USDA-FmHA
Form FmHA 1980–38
(Rev. 4–94)

Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government

The purpose of this Agreement is to establish the Lender as an approved participant in the Farmer Programs Guaranteed Loan Programs of the Farmers Home Administration (FmHA), U.S. Department of Agriculture. This Agreement provides the terms and conditions for originating and servicing such loans, including lines of credit.

Participating Lender ("Lender"): __________
Tax Identification Number: __________
Business Address: __________
Telephone Number: __________

Complete the appropriate section indicating participation/non-participation in the Certified Lender Program.

Participating in the Certified Lender Program ("CLP")

Offices Affected by Agreement All ☐ As listed below ☐

____
____
____
____

States Affected by Agreement

____
____
____
____

Not participating in the Certified Lender Program

Offices Affected by Agreement All ☐ As listed below ☐

____
____
____
____

States Affected by Agreement

____
____
____
____

Read this Agreement in its entirety and sign in the space on the last page. Your signature indicates consent with this Agreement.

Public reporting burden for this collection of information is estimated to average 1 hour 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 Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, (OMB No. 0575–0079), Washington, DC 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

Part I—General Requirements

A. Duties and Responsibilities of FmHA ("Agency")

1. *Payment on Claims.* FmHA agrees to make payment on its claims in accordance with the terms of the guarantee and Agency regulations in 7 CFR 1980, Subparts A and B. The maximum loss payment may not exceed the amount determined in the guarantee, including the percentage of principal and any accrued interest. The guarantee is supported by the full faith and credit of the United States and is incontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or which the Lender participates in or condones. (See 7 CFR 1980.107.)

2. *Personnel Available for Consultation.* FmHA shall make personnel available for consultation on interpretations of Agency regulations and guidelines. The Lender may consult with Agency personnel regarding unusual underwriting, loan closing, and loan liquidation questions.

B. General Requirements for the Lender

1. *Eligibility to Participate.* The Lender must meet the requirements set forth in 7 CFR 1980.13 and be approved by FmHA to be a participant in the Farmer Programs Guaranteed Loan Programs.

2. *Knowledge of Program Requirements.* The Lender is required to obtain and keep itself informed of all program regulations and guidelines, including all amendments and revisions. The Lender must establish and maintain adequate and written internal policies for loan origination and servicing to meet these requirements. These policies will be subject to review upon the request by FmHA.

3. *Notification.* The Lender shall immediately notify FmHA in writing if the Lender:

- Becomes insolvent;
- Has filed for any type of bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;
- Has taken any action to cease operations, or to discontinue servicing or liquidating any or all of its portfolio guaranteed by FmHA;
- Has changed its name, location, address, tax identification number, or corporate structure;
- Has been debarred, suspended, or sanctioned in connection with its participation in any Federal guaranteed program; or
- Has been debarred, suspended, or sanctioned by any Federal or State licensing or certification authority.

4. *Employee Qualifications.* The Lender shall maintain a staff that is well trained and experienced in origination and loan servicing functions, as necessary, to ensure the capability of performing all the acts within its authority.

5. *Conflict of Interest.* The Lender certifies that its officers or directors, principal stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System (FCS) institutions with direct lending authority that have normal stock/share requirements for participating), or other principal owners do not have, or will not have, a substantial financial interest in, or business dealings with, any guaranteed loan borrower. The Lender also certifies that neither any borrower nor its officers or directors, stockholders, or other owners have a substantial financial interest in the Lender. If the borrower is a member of the Board of Directors of a Farm Credit Bank or other FCS institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

6. *Facilities.* The Lender shall operate its facilities and branch offices in a prudent and businesslike manner.

7. *Reporting Requirements.* The Lender recognizes that FmHA, as guarantor, has a vital interest in ensuring that all acts performed by the Lender regarding the subject loans are performed in compliance with this Agreement and Agency regulations. Information on the status of guaranteed loans is necessary for this purpose, as well as to satisfy budget and accounting reporting required by the Department of the Treasury and the Office of Management and Budget. The Lender agrees to provide FmHA with all the data required under Agency regulations and any additional information necessary for FmHA to monitor the health of its guaranteed loan portfolio, and to satisfy external reporting requirements.

The Lender also agrees to provide to FmHA, as requested by the Agency or as required by regulation, copies of audited financial statements, reports on internal controls, copies of compliance audits, and such other information that may be required for FmHA to properly monitor the Lender's performance.

C. Underwriting Requirements

1. *Responsibility.* The Lender is responsible for originating, servicing, and collecting all guaranteed Farmer Programs loans in accordance with Agency regulations.

2. *Origination Process*

a. *General Eligibility.* The Lender shall make a preliminary determination whether loan applicants meet the general eligibility requirements of the Farmer Programs Guaranteed Loan Programs. FmHA will make the final determination.

b. *Delinquency of Federal Debt.* The Lender shall determine whether the loan applicant is delinquent on any Federal debt. The Lender shall use credit reports and any other credit history to make this determination. If the loan applicant is delinquent on a federal debt, processing of the application may only continue in accordance with Agency regulations.

c. *Appraisals of Collateral.* The Lender shall ensure that the value of any collateral property or property to be purchased is determined by a qualified appraiser, including a State licensed or certified appraiser when required by law or regulation.

d. *Change in Borrower's Condition.* Before FmHA issues a loan guarantee, the Lender will certify that there has been no adverse change(s) in the borrower's condition, financial or otherwise, during the time period from issuance of a Conditional Commitment to issuance of the guarantee of the loan. This certification by the Lender must address all adverse changes and be supported by financial statements of the borrower and its guarantors which are not more than 90 days old at the time of certification. For use in this provision alone, the term "Borrower" includes any member, joint operator, partner or stockholder. (See 7 CFR 1980.117.)

e. *Limitation on Guarantee.* Any note requiring the payment of interest on interest will only be guaranteed if such payment is the result of restructuring the note and the new principal amount does not exceed statutory loan limits. Default charges or late charges of any kind, and/or interest accrued on interest charges other than that resulting from restructuring the loan and within statutory loan limits, will not be covered by the guarantee.

3. *Loan Closing*

a. *Lender's Fee.* The Lender will submit the required guarantee fee with the Guaranteed Loan Closing Report.

b. *Lender's Use of Funds.* The Lender agrees funds for the particular loan or line of credit will be used only for the purposes authorized in 7 CFR 1980, Subparts A and B as set forth in Form FmHA 1980–15.

c. *Loan Closing.* All loans guaranteed by the Agency shall be closed by attorneys, escrow companies, escrow departments of lending institutions, or other person(s) or entities skilled and experienced in conducting loan closings. The Lender shall:

• Ensure that documents, including the mortgage and any security agreements, chattel mortgages or equivalent documents relating to it have been properly signed, are valid and contain terms enforceable by the Lender;

• Ensure that all security with appropriate lien priorities is obtained in accordance with Form FmHA 1980–15, and Agency regulations;

• Ensure that all closing documents required to be recorded are recorded accurately, in the appropriate offices, and in a timely and accurate manner;

• Ensure that security interests are perfected in collateral according to applicable regulatory requirements and procedures;

• Ensure that all required hazard insurance is obtained in accordance with Agency regulations;

• Collect all fees and costs due and payable by the borrower in the course of the loan transaction and disburse payment directly to the parties for services rendered; and

• Ensure that all loan proceeds are used as authorized.

The entire loan will be secured equally with the same security and the same lien priority for both the guaranteed and unguaranteed portions of the loan, under the assurance that the unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan

4. *Lender's Sale or Assignment of Guaranteed Loan.*

The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate. The Lender may market all or part of the guaranteed portion of the loan or after loan closing only if the loan is not in default as set forth in the terms of the note. A line of credit may only be marketed by participation. Refer to 7 CFR 1980.119 for further guidelines.

D. Servicing Requirements

1. *Responsibilities.* The Lender will service the entire loan as mortgagee and/or secured party of record in a reasonable and prudent manner, notwithstanding the fact that another (Holder) may hold a portion of the loan. The Lender will obtain compliance with the covenants and provisions in the note, security instruments, and any other agreements, and notify FmHA and the borrower of any violations. Specific responsibilities are described in 7 CFR 1980.130.

2. *Negligent Servicing.* The guarantee cannot be enforced by the Lender to the extent a loss results from a violation of usury laws or negligent servicing regardless of when FmHA discovers such violation or negligence. Negligent servicing is defined as the failure to perform services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes both a failure to act and also not acting in a timely manner in include actions taken up to the time of loan maturity or until a final loss is paid. (See 7 CFR 1980.11.)

3. *Payments.* Payments from the borrower shall be processed upon receipt according to 7 CFR 1980.119, and may include escrow premiums for hazard insurance and real estate taxes. The Lender shall promptly disburse to any Holder(s) their pro rata share thereof which has been determined according to their respective interests in the loan, less only the Lender's servicing fee.

4. *Collateral*

a. *Insurance.* The Lender shall ensure that adequate insurance is maintained in accordance with Agency regulations, including the maintenance of hazard insurance containing a loss payable clause in favor of the Lender as the mortgagee or secured party.

b. *Escrow Accounts.* The Lender may establish separate escrow accounts. All escrow accounts must meet applicable Federal and State laws and regulations, and must be fully insured by the FDIC.

c. *Inspection.* The Lender shall inspect the collateral as often as necessary to properly service the loan and ensure the collateral is being properly maintained.

d. *Taxes.* The Lender shall ensure that taxes, assessments, or ground rents against or affecting collateral are paid.

5. *Delinquent Accounts*

a. The Lender will notify FmHA using Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," when a borrower is 30 days past due on a payment or if the borrower has not provided the required financial statements to the Lender or is otherwise in default. The Lender will continue to submit Form FmHA 1980–44 every 60 days until the default is resolved, and will notify the Agency when the default is resolved. A meeting will be arranged by the Lender with the borrower and FmHA to resolve the problem. Actions taken by the Lender, with written concurrence of FmHA, may include but are not limited to, any curative actions contained in Subpart B or 7 CFR Part 1980 or liquidation.

b. The loan may be reamortized, rescheduled, or written down only with the agreement of any Holder(s) of the guaranteed portion of the loan, and only with FmHA's written agreement.

c. The Lender will negotiate in good faith to resolve any problem in order to allow the borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the borrower for Interest Assistance under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the Interest Assistance Program has been established.

d. Debt Writedown. (Refer to 7 CFR Part 1980. Subpart B, 1980.125.) The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan (including any capitalized interest resulting from the restructuring of the loan and not exceeding statutory loan limits) before the writedown and the outstanding balance of the loan after the writedown. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro rata share of any loss sustained. Interest will be paid to the date of the check on all debt writedown claims.

e. The Lender must participate in any farm credit mediation program of any State in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, 1980.126.

f. When the borrower has not made payment of principal or interest due on the loan for 60 days or more or the Lender has failed to give the Holder(s) its pro rata share of any payment made by the borrower within 30 days of receipt of the payment, the Holder may request the lender to repurchase the unpaid guaranteed portion of the guaranteed loan. If the Lender chooses not to repurchase, FmHA will purchase the unpaid principal balance. Upon FmHA's repurchase, the lender will liquidate the account or reimburse FmHA the amount of the repurchase within 180 days of FmHA's repurchase. See 7 CFR 1980.119 for further guidance on repurchasing loans from Holder(s).

6. *Default/Liquidation*

a. *Protective Advances.* Protective advances must constitute a debt of the borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000 made by a CLP Lender. For non-CLP Lenders, the amount is $500. Refer to 7 CFR 1980.136.

b. *Additional Loan or Advances*. Except as provided for in each Borrower's loan agreement, the Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

c. *Future Recovery*. After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid the amount recovered in proportion to the percentage it guaranteed for the loan.

d. *Transfer and Assumption Cases*. Refer to 7 CFR 1980.123. If a loss occurs upon the completion of a transfer and assumption for less than the full amount of the debt and transferor debtor (including Guarantors) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of transfer and assumption, if not assumed by the transferee, will be entered in the appropriate space on Form FmHA 449-30.

e. *Bankruptcy*. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. Loss payments on bankruptcy cases will be processed according to the terms described in 7 CFR 1980.144.

f. *Liquidation*. If the Lender concludes that liquidation of a guaranteed loan account is necessary due to default or third party actions which the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. All liquidations must receive prior concurrence by the appropriate FmHA official. Refer to 7 CFR 1980.146 for specific guidance on the procedures for liquidation.

7. *Servicer*

If the lender contracts for servicing of guaranteed Farmer Programs loans, the lender is not relieved of responsibility for proper servicing of the loans.

E. Agency Reviews of Lender's Operations

FmHA shall have the right to conduct reviews, including on-site reviews, of the Lender's operations and the operations of any agent of the Lender, for the purpose of verifying compliance with this Agreement and Agency regulations and guidelines. These reviews may include, but are not limited to: audits of case files; interviews with owners, managers, and staff; audits of collateral; and inspections of the Lender's and/or its agents underwriting, servicing, and liquidation guidelines. The Lender and/or its agents shall provide access to all pertinent information to allow the Agency, or any party authorized by the Agency, to conduct such reviews.

F. Conformance to Standards

1. *Standards*. The Lender shall conform to the standards outlined in this Agreement and Agency regulations for participation in Farmer Programs Guaranteed Loan Programs. CLP Lenders must maintain compliance with the criteria set forth in 7 CFR 1980.190. The Agency shall determine Lender adherence to the standards based on:

- Adequacy in meeting requirements for origination, servicing, and liquidation of loans and lines of credit, including protection of collateral;
- Satisfaction of the reporting requirements of the Agency;
- Success in operating in a sound and prudent businesslike manner;
- Portfolio performance compared to overall performance of the Farmer Program Guaranteed Loan Programs; and
- Results of on-site reviews of the underwriting and/or servicing performed by the Lender.

2. *Determination of Non-Conformance*. The Agency shall carefully consider the circumstances and available facts in determining whether there is a pattern of Lender non-conformance with applicable standards. FmHA shall determine the propriety of any decision made by the Lender based on the facts available at the time the specific action was taken. It is understood by the Agency and intended by this Agreement that the Lender has the authority to exercise reasonable judgment in performing acts within its authority. However, FmHA reserves the right to question any act performed or conclusion drawn that is inconsistent with this Agreement or Agency regulations.

3. *Agency Action*. If the Lender is determined to be in non-conformance with any Federal law, State law, Agency regulation or guideline, or the terms of this Agreement, FmHA reserves the right to take action in accordance with its laws and regulations.

4. *Lender Right of Appeal*. FMHA shall provide the Lender an opportunity to appeal, in accordance with Agency regulations at 7 CFR Part 1980, Subpart A, adverse actions taken by the Agency.

Part II—List of Agency Regulations and Guidelines and Designation of Lender Authority To Perform Certain Acts

A. List of Agency Regulations

The following is a list of FmHA regulations which, along with any future amendments consistent with this Agreement, contain the information necessary for the Lender to be in compliance with Agency requirements.

1. 7 CFR 1980 Subpart A—General
2. 7 CFR 1980 Subpart B—Farmer Program Loans

B. Authority To Perform Certain Acts

Lenders participating in the CLP may be granted special authority to certify compliance with certain statutory or regulatory requirements. 7 CFR 1980.190 describes authorities and responsibilities for CLP Lenders.

Part III—Duration and Modification

A. Duration and Termination

1. *Duration of Agreement*. For CLP Lenders, this Agreement is valid for five years unless terminated by the Lender or FmHA as described below or revoked according to 7 CFR 1980.190. For non-CLP Lenders, this Agreement will be valid indefinitely unless terminated by the Lender or FmHA as described below.

2. *Modification of Agreement*. This Agreement may be modified or extended only in writing and by consent of all parties.

3. *Termination of FmHA*. This Agreement may be terminated by FmHA in accordance with Agency regulations.

4. *Termination by the Lender*. This Agreement may be terminated by the Lender by providing 30 days written notice to FmHA.

5. *Effect of Termination on Responsibilities and Liabilities*. Responsibilities or liabilities that existed before the termination of the Agreement with regard to outstanding guarantees will continue to exist after termination unless the Agency expressly releases the Lender from such responsibilities or liabilities in writing. The Lender shall remain obligated to service and liquidate the guaranteed loans remaining in the portfolio unless and until FmHA or the Lender transfers the loans. These requirements concerning loan management by the Lender and rights of the Agency under this Agreement shall remain in effect whether the Agreement is terminated by the Lender or FmHA.

B. Entire Agreement

This Agreement, Parts I through IV inclusive, and any regulations or guidelines incorporated by reference, shall constitute the entire Agreement. There are no other agreements, written or oral, regarding the terms in this Agreement which are or shall be binding on the parties.

Part IV—Endorsement

The undersigned certifies that they have read and understand the requirements of this Agreement, and in 7 CFR Part 1980, Subparts A and B, and agree to the participation requirements and other provisions of this Agreement.

Notice. Requests for Guarantee and any notices or actions are expected to be initiated through the following FmHA County Offices:

____
____
____
____
____
____

Lender: Complete this block of Section IV.

XXI. Lender

____
(Name)

____
(IRS I.D. Tax No.)

By:

____
(Signature)

____

(Name Typed or Printed)
Title ______
Date ______
Attest ______

This block of Section IV will be completed by FmHA.
The effective date of this Agreement is ______
The expiration date of this Agreement is ______

UNITED STATES OF AMERICA
Farmers Home Administration
By:
______
(Signature)
Title ______
______
(Name Typed or Printed)
Date ______

Subpart B—Farmer Program Loans

9. Section 1980.124 is amended by removing paragraph (d)(1); by redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2), respectively; and by revising paragraphs (a)(7), (b)(6) and (e) to read as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

(a) * * *

(7) The lender may capitalize the outstanding interest when restructuring the loan. If Forms FmHA 449–34, 449–35, 449–36, 1980–27, or 1980–38 previously executed for the guaranteed loan/line of credit prohibit the capitalization of interest, the County Supervisor will provide the lender with Form FmHA 1980–85. By executing this form, FmHA waives the restriction only for capitalization of interest resulting from restructuring a Farmer Programs loan and not exceeding statutory loan limits. The form will set out the new principal loan amount (treating delinquent interest as principal) and the guaranteed portion of the loan amount. If these forms do not prohibit the capitalization of interest, the new principal loan and the guaranteed portion, if greater than the original amounts of the forms, will be identified in an addendum, Form FmHA 1980–84. The appropriate modification form will be issued under this paragraph after the appropriate official concurs with the restructuring. Subsequent servicing of the guaranteed loans will take into account the new principal and guaranteed amounts. Capitalized interest authorized under this paragraph will be treated as part of the principal and interest indebtedness in calculating the maximum loss amount under § 1980.20 of subpart A of this part.

* * * * *

(b) * * *

(6) There is no limit on the number of times a consolidation or rescheduling action may take place.

* * * * *

(e) *Principal limit.* As a result of the capitalization of interest with restructuring, the rescheduled/reamortized note or line of credit agreement which exists after a consolidation occurs may increase the amount of principal which the borrower would have been required to pay if the rescheduling, reamortization, or consolidation had not been made. However, in no case will such principal amount ever exceed the statutory loan limits set out in this subpart.

Dated: March 9, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–7545 Filed 3–29–94; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 236, 242, and 274a

[INS No. 1651–93; AG Order No. 1862–94]

RIN 1115–AD64

Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule would amend existing regulations to streamline the adjudication of asylum applications submitted to Asylum Officers within the Immigration and Naturalization Service (INS). The rule would allow the INS to grant asylum to deserving applicants more promptly and to resolve expeditiously the great number of meritless and abusive applications being filed each year. Under the rule, Asylum Officers would no longer prepare detailed denials in cases where they do not grant asylum to applicants who have no legal immigration status, but instead would automatically issue mandatory referrals of these applications to Immigration Judges for completion of the adjudication as part of exclusion or deportation proceedings. In addition, the rule makes interviews discretionary, authorizing the Asylum Officers to refer claims immediately to Immigration Judges. The rule also would restrict employment authorization to applicants for asylum or withholding of deportation whose claims have been pending for more than 150 days, a period which would not run until the alien has filed a complete application and would not include delays sought or caused by the applicant. This rule also would conform existing regulations to the current practice of receiving applications for asylum and withholding of deportation at the four INS Service Centers. To provide necessary funding for the asylum adjudications process, the rule would provide for imposition of a filing fee for asylum applications and for employment authorization applications based on a pending asylum application.

DATES: Written comments must be submitted on or before May 31, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5307, 425 I Street NW., Washington, DC 20536. To ensure proper handling please reference INS No. 1651–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, Asylum Division, Immigration and Naturalization Service, 425 I Street NW., ULLICO 3rd Floor, Washington, DC 20536, (202) 633–4389, or Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980, Public Law 96–212, amended the Immigration and Nationality Act ("Act") by adding a new section 208 to require the Attorney General to establish a procedure for any alien who is physically present in the United States or at a land border or port of entry, regardless of such alien's status, to apply for asylum. 8 U.S.C. 1158. Under 8 CFR part 208, effective October 1, 1990, applications for asylum or withholding of deportation filed by aliens who are not subject to exclusion or deportation proceedings, as well as the applications of alien crewmen, stowaways, and aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), are adjudicated in the first instance by a corps of professional Asylum Officers in the Office of Refugees, Asylum, and Parole. 8 CFR 208.1, 208.2, 208.4, and 253.1(f). An Asylum Officer conducts a nonadversarial interview with an applicant to elicit all relevant and useful information bearing on the applicant's eligibility for asylum, and has authority to receive other evidence bearing on the claim. 8 CFR 208.9. When an Asylum Officer intends to deny an application in reliance upon any materials identified in 8 CFR 208.12, that material must be identified, and unless the material is classified, the applicant must be provided with an opportunity to inspect, explain, and rebut the material. The Asylum Officer must decide whether to grant or deny the application after review of the properly submitted rebuttal. If the Officer denies the application, he or she must prepare and serve upon the applicant an opinion stating why the application was denied. A decision to grant asylum also requires a written decision. 8 CFR 208.14 and 208.17.

If an Asylum Officer denies an application for asylum or withholding of deportation, the applicant may renew that application before an Immigration Judge after the applicant has been served a Notice to Alien Detained for Hearing by an Immigration Judge (Form I–122) under 8 CFR 235.6, or after the applicant has been served with an Order to Show Cause under 8 CFR 242.1. Immigration Judges have exclusive jurisdiction over these applications once the charging document has been filed with the Office of the Immigration Judge. 8 CFR 208.2(b). The Immigration Judge shall decide such claims de novo. 8 CFR 208.2(b). If denied, the alien, by filing a Notice of Appeal (Form EOIR–26), may obtain review of his or her claim by the Board of Immigration Appeals. The alien may pursue further appeals in the Federal courts.

An applicant for asylum also is eligible to apply for employment authorization. 8 CFR 208.7(a) and 274a.12(c)(8). Such applications, submitted on Forms I–765, often accompany asylum applications. The INS must adjudicate an employment authorization application within 90 days of receipt, 8 CFR 274a.13(d), and must grant employment authorization if the asylum application is not frivolous. "Frivolous," as defined in 8 CFR 208.7(a), means "manifestly unfounded or abusive."

The existing system for adjudicating asylum claims cannot keep pace with incoming applications and does not permit the expeditious removal from the United States of those persons who claims fail. While part of this difficulty is attributable to limited resources, the problem also stems in large part from the effort to meet procedural requirements imposed by current regulations. On October 1, 1990, the INS had a backlog of approximately 90,000 asylum claims. Since that date, approximately 250,000 cases have been added to that backlog. Asylum applications are received at a current rate approaching 150,000 per year. A significant and growing percentage of current receipts are claims that appear on their face to be nonmeritorious or abusive. As currently constituted, INS regulations mandate the interview of all applicants, adjudication of requests for work authorization, written decisions by an Asylum Officer justifying all denials, de novo review of denials by an Immigration Judge, at the availability of administrative and judicial review if the Immigration Judge also denies the claim. Taken together, these requirements unduly lengthen and complicate the adjudication process without appreciable benefit to deserving asylum applicants. Indeed, most asylum applicants wait a year or more to receive even initial decisions on their cases.

Summary of the Proposed Rule

The proposed rule will streamline the asylum adjudications process by making several principal reforms.

First, the role and functions of Asylum Officers will change to allow the Officers to address a greater volume of applications and to concentrate their efforts on approving meritorious claims. Officers will no longer deny applications from aliens who are excludable or deportable. Under this proposed rule, Officers will either grant the application or refer the application to the Immigration Judge after serving upon the applicant a charging document (Form I–122 or Order to Show Cause) to initiate exclusion or deportation proceedings. The Asylum Officer will no longer prepare and send a Notice of Intent to Deny in those cases that the Officer does not intend to grant. Instead, the Asylum Officer will issue an automatic mandatory referral letter and, with supervisory approval, a charging document. Supervisory Asylum Officers already have the authority to issue such charging documents under 8 CFR 235.6(a) and 242.1(a)(21). In addition, Asylum Officers no longer will be required to conduct personal interviews, but will have discretion to conduct such an interview in any case they deem appropriate.

Asylum Officers will continue to grant or deny applications in the small number of cases involving aliens who have a current legal immigration status not derived from their asylum application. In this circumstance no charging document will be issued if the Officer denies the claim. The applicant instead will receive a denial letter from the Asylum Officer.

Second, in cases referred to an Immigration Judge, the Asylum Officer shall refer and forward to the Office of the Immigration Judge the asylum application originally received by the Asylum Officer. This application shall form part of the record of proceedings. This reform is intended to encourage the filing of complete and responsive applications in the first instance and to discourage applicants from filing claims before Immigration Judges that differ from the claims they filed before Asylum Officers.

Third, an asylum applicant will not be eligible to apply for employment authorization based on his or her asylum application until 150 days after the date on which the asylum application is fled. These reforms are important for several reasons. They will encourage the INS and the Office of the Immigration Judge to adjudicate claims promptly within the 150-day period, since, by doing so, they would avoid the necessity of separately adjudicating the work authorization applications. These reforms also will authorize the INS to deny employment authorization to those whose underlying asylum applications have been denied. These reforms should reduce the incidence of asylum applications filed primarily to obtain employment authorization.

Applicants with pending asylum claims will wait longer than required at present to receive employment authorization. The Department selected 150 days as the period beyond which it would not be appropriate to deny work authorization to a person whose claim has not been adjudicated. Ideally, however, few applicants would ever reach the 150-day point. Rather, the Department would aim to complete the process in less time, serving to decide most cases within 120 days. Those whose claims are not adjudicated by the Asylum Officer and the Immigration Judge within the 150-day period will, subject to certain conditions, be eligible to apply for and to receive work authorization. The INS will adjudicate these applications for work authorization within 30 days of receipt, regardless of the merits of the underlying asylum claim. Those whose claims are denied by the Immigration Judge within the 150-day period shall not be eligible to apply for work authorization. In addition, those whose claims are denied by the Immigration Judge within the 30-day period, but prior to the issuance of employment authorization, will not receive employment authorization. Applicants granted asylum will continue to be authorized immediately to be employed.

The proposed rule also would eliminate the provisions of 8 CFR 274a.12(c)(13), which permit the issuance of employment authorization to any non-detained alien against whom exclusion or deportation proceedings have been instituted. The INS believes that the other paragraphs within 8 CFR 274a.12(c) provide an adequate basis for the issuance of employment authorization to virtually all deserving persons in exclusion or deportation proceedings who are not detained.

The proposed rule also would institute a fee for filing asylum applications. Under 31 U.S.C. 9701, federal agencies may, subject to policies prescribed by the President, assess user fees for services and things of value that they provide. The statute authorizing this practice indicated that it was the sense of the Congress that "each service or thing of value provided by an agency" should be "self-sustaining to the extent possible." 31 U.S.C. 9701(a). Until now, the INS has sought to provide asylum status determinations without charge to the asylum applicant. Asylum applicants have paid a fee only when filing an application for renewed work authorization. The INS has avoided charging asylum application fees by adding a surcharge to the fees for filing applications for immigration benefits other than asylum. Monies collected through this surcharge have, in part, funded the asylum program, as permitted by section 286(m) of the Act, 8 U.S.C. 1356(m). The INS has determined, however, that even the funds collected through the surcharge have failed to cover the costs of administering the asylum program. For this reason, it has become necessary to propose a filing fee for persons filing an application for asylum or withholding of deportation (Form I–589, "Request for Asylum in the United States"). Asylum applicants also would pay a fee to file initial applications for employment authorization (Form I–765, "Application for Employment Authorization").

The estimated cost associated with adjudicating each asylum application, taking into account the salaries and benefits of asylum officers and clerical staff, supervisory, management and administrative activities, data processing, and legal services, is $615. As it would impose a hardship on asylum applicants were they required to pay the entire cost of the service rendered them, part of this cost is recovered through the surcharge mentioned above. The INS has calculated that the portion not currently recovered through the surcharge could be recovered if the proposed fee for asylum applications were set at $130. Asylum applicants applying for initial work authorization would pay an additional fee of $60, the fee currently set forth at 8 CFR 103.7(b). Both fees would be subject to the waiver available under 8 CFR 103.7(c) to applicants who cannot pay the prescribed fee.

Beyond these principal reforms, the proposed rule will eliminate the requirement that asylum adjudicators await the receipt of advisory opinions from the Department of State. Instead, the State Department will provide detailed country conditions information accessible by electronic data base. In addition, both the INS and Immigration Judges may request specific information from the State Department concerning country conditions or individual cases and the State Department also may provide, at this discretion, information available to it concerning individual cases. However, the proposed rule would eliminate the requirement that Asylum Officers and Immigration Judges wait for the receipt of State Department comments before adjudicating authorizations for asylum.

In addition, the proposed rule would authorize Asylum Officers and Immigration Judges to deny otherwise approvable claims on the ground that the applicant can be deported or returned to a country on which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States. This authority will be helpful in coordinating United States asylum policy with that of other nations.

The proposed rule also would curtail the authority of Asylum Officers to grant or deny withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). Under current regulations, if an Asylum Officer denies an alien's application for asylum, he shall also decide whether the alien is entitled to withholding of deportation. 8 CFR 208.16(a). Under the proposed rule, however, Asylum Officers will no longer deny asylum in the cases of aliens who are to be placed in exclusion or deportation proceedings, and thus will have no reason to reach the issue of withholding of deportation. Accordingly, it is appropriate to limit jurisdiction over withholding of deportation to Immigration Judges. The only cases in which Asylum Officers could adjudicate such claims would be those involving crewmen stowaways, or aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c).

Finally, the proposed rule would amend 8 CFR 242.17(e) to specify that information contained in an asylum application may be used as a basis for an Order to Show Cause against the applicant under 8 CFR 242.1. This change ensures that the INS may use the asylum application to refer expeditiously to Immigration Judges the cases of otherwise deportable applicants whose claims are not granted by Asylum Officers.

Several sections amended by this proposed rule were the subject of a prior proposed rule designed to implement the intent of Congress to eliminate asylum benefits for aliens convicted of aggravated felonies and to classify aggravated felonies as "particularly serious crimes" under section 243(h) of the Act, 8 U.S.C. 1253(h). See 58 FR 38312–38314 (July 16, 1993). In order to simplify the rulemaking process, the substance of the provisions set forth in the prior proposed rule have been incorporated into the present proposed rule, and the prior proposed rule is withdrawn. The provisions of the prior proposed rule have not been adopted verbatim, but have been adapted to reflect the overall changes made by this proposed rule. However, the substantive effects of the aggravated felony provisions in this proposed rule are identical to those set forth in the prior proposed rule.

The comments to the prior proposed rule recommended that conviction for an aggravated felony not automatically constitute a "particularly serious crime," and that asylum applicants convicted of an aggravated felony be given an opportunity to demonstrate that they are not a danger to the community. The INS believes that this proposal is contrary to the Congress's intent in enacting section 515 of the Immigration Act of 1990, 8 U.S.C. 1158(d). The Department invites comments on these provisions, including comments from those who responded to the prior proposed rule.

This proposed rule also makes several conforming and technical amendments. The rule deletes all references to the Asylum Policy and Review Unit, an entity within the Department of Justice that no longer exists. The rule also clarifies the responsibilities of the asylum applicant to provide a competent interpreter at an interview with an Asylum Officer.

Proposed Amendments

8 CFR 103.7(b)(1) would be amended to provide that a fee of $130.00 be charged for the filing of a Form I–589, Application for Asylum or Withholding of Deportation.

8 CFR 208.1(a) would be amended to specify that these regulations will apply to all adjudications of asylum applications, whether by an Asylum Officer or by an Immigration Judge, on or after the effective date of the

regulations; and to specify that the provisions relating to a person convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43), shall apply to asylum applications filed on or after November 29, 1990. 8 CFR 208.1 also would be amended to make a number of technical amendments.

8 CFR 208.2(a) would be amended to specify that asylum applications received by an Asylum Officer are either to be adjudicated by the Officer or referred to an Immigration Judge in accordance with amended 8 CFR 208.14. 8 CFR 208.2(b) would be amended to specify that in cases where the adjudication of an application has been referred by an Asylum Officer to an Immigration Judge in accordance with 8 CFR 208.14, the original application shall be forwarded to the Immigration Judge. This paragraph also would be amended to specify that Asylum Officers do not have jurisdiction to grant or deny withholding of deportation, except, pursuant to 8 CFR 253.1(f), in cases of crewmen, stowaways, and aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c).

8 CFR 208.3(a) would be amended by eliminating the requirement that a Form G–325A (Biographical Information) be filed. This reflects the fact that the Form I–589 is to be revised to include complete biographical information. Also, the form and any supporting material is to be filed in triplicate, rather than quadruplicate. 8 CFR 208.3 also would be amended by adding new paragraphs (c) and (d). Proposed paragraph (c) states that the instructions on the asylum application shall inform the applicant that information provided on the application may be used in the institution of, or as evidence in, exclusion or deportation proceedings; that mailing to the address provided on the application shall constitute adequate service of all notices or other documents, including charging documents; that preparers assisting applicants in completing their asylum applications must be identified clearly; that the signatures on the application are made under penalty of perjury and may form the basis for denial if the applicant later expresses ignorance of the contents of the application; that failure to respond to all of the questions may form the basis for denial; and that knowing placement of false information may subject the applicant or preparer to civil penalties under section 274C of the Act, 8 U.S.C. 1324c. Proposed paragraph (d) requires that the application be signed under penalty of perjury by the applicant and by any person other than an immediate relative who prepared or assisted the applicant in preparing the application.

8 CFR 208.4(a) would be amended to provide that, except for applications that are to be filed with the District Director or the Office of the Immigration Judge under 8 CFR 208.4 (b) and (c), respectively, applications shall be filed by mail with the Service Center servicing the Asylum Office with jurisdiction over the place of the applicant's residence. The amended paragraph also would specify that addresses of the Service Centers shall be made available through the local INS Information Unit. This amendment will conform the regulations to current INS practice and will not have an adverse impact on any applicant for asylum or withholding of deportation. Incorrectly addressed applications shall continue to be forwarded to the appropriate Service Center.

8 CFR 208.4(a) also would be amended to provide that in the case of an applicant convicted of an aggravated felony, the Asylum Office shall not forward a copy of the application to the Department of State. This amendment is adopted from the prior proposed rule on aliens convicted of aggravated felonies. See 58 FR 38312 (July 16, 1993).

8 CFR 208.4 also would be amended by adding a new paragraph (d) requiring asylum applicants to include with their Form I–589 the fee set forth in 8 CFR 103.7(b)(1).

8 CFR 208.7 would be amended to state that, unless he or she has been convicted of an aggravated felony, an applicant for asylum shall be eligible to submit an application for employment authorization (I–765) under 8 CFR 274a.12(c)(8). Such an application may be submitted no earlier than 150 days after the date on which the applicant's application for asylum was filed in accordance with amended 8 CFR 208.4. An applicant whose I–589 application has been denied by an Immigration Judge during this 150-day period shall not be eligible to apply for employment authorization as an asylum applicant even if he or she is appealing the denial. Furthermore, an applicant who is in legal immigration status and whose I–589 application is denied by an Asylum Officer within the 150-day period shall not be eligible for work authorization under 8 CFR 274a.12(c)(8). An initial application for employment authorization shall be adjudicated by the INS, after the expiration of the 150-day period, within 30 days of receipt. An applicant whose I–589 application is denied by an Immigration Judge or by an Asylum Officer after the filing of the I–765, but prior to adjudication of the I–765 within the 30-day period, shall be denied employment authorization under 8 CFR 274a.12(c)(8). For purposes of computing the 150-day and 30-day periods, these periods shall be extended by the equivalent of any delay requested or caused by the applicant. The periods also shall be extended by the equivalent of the time between the issuance of a request for evidence under 8 CFR 103.2(b)(8) and the receipt of the applicant's response to such request.

In addition, 8 CFR 208.7 would establish that an applicant who has been convicted of an aggravated felony shall not be granted employment authorization. If an applicant has previously received employment authorization and his or her application for asylum or withholding of deportation is denied because the applicant has been convicted of an aggravated felony, the employment authorization shall terminate automatically, as of the date of the denial. This amendment is adopted from the prior proposed rule on aliens convicted of aggravated felonies. See 58 FR 38312, 38313 (July 16, 1993).

8 CFR 208.7(d) would be amended to require that, in order for employment authorization to be renewed before its expiration, applications for renewal must be received by the INS at least ninety days before the employment authorization expires.

8 CFR 208.9 would be amended in several respects. These amendments include provisions adopted from the prior proposed rule on aliens convicted of aggravated felonies. See 58 FR 38312–38314 (July 16, 1993).

First, paragraph (a) would be amended to provide that an Asylum Officer has discretion to conduct an interview in those cases such Officer deems appropriate.

Second, 8 CFR 208.9 (b) and (c) would be amended to require the asylum applicant to provide full identifying information at the time of any interview and to authorize the Asylum Officer to further register or verify that identity, including through the use of electronic means. The Asylum Officer also would be permitted to verify the identity of the interpreter.

Third, 8 CFR 208.9(d) would be amended to require that, at the conclusion of the interview, the applicant be notified that he or she must appear in person to acknowledge receipt of the written decision of the Asylum Officer.

Fourth, a new paragraph (g) would be added to 8 CFR 208.9, specifying that an applicant who is unable to proceed with his or her interview in English must supply a competent interpreter, at no expense to the INS. The proposed paragraph (g) would prohibit the applicant's attorney or a witness testifying on the applicant's behalf from serving as the interpreter.

8 CFR 208.11 would be amended to change the role of the Department of State from one of routinely providing comments on individual cases to one of providing primarily generic, non-case-specific, current country conditions information. The rule would eliminate the mandatory period during which Asylum Officers and Immigration Judges must await receipt of State Department comments in individual cases, but would permit the State Department to comment on individual cases at its discretion.

8 CFR 208.12(a) would be amended to eliminate the provisions requiring an Asylum Officer to provide the applicant with an opportunity to inspect, explain, or rebut the material(s) relied upon to find that the applicant's claim has not been approved. The Asylum Officer will continue to rely upon materials provided by the Department of State, the District Director, or other credible sources in making a decision to grant asylum, to refer the case to an Immigration Judge, or to deny asylum for applicants having another lawful immigration status. The applicant will have the opportunity to review such materials to the extent they are relied upon in the course of proceedings before an Immigration Judge.

8 CFR 208.14 would be amended by inserting a new paragraph (b) to limit the authority of an Asylum Officer to deny applications for asylum or withholding of deportation to those cases involving aliens who do not appear to be excludable or deportable under sections 212 or 242 of the Act (8 U.S.C. 1182 or 1252), respectively. Officers would continue to have the authority to grant applications from any applicant, provided, as a present, that the applicant is not in exclusion or deportation proceedings. If the Officer does not grant the application, and the applicant is subject to exclusion or deportation proceedings, the Officer shall refer the application to an Immigration Judge for adjudication in connection with those proceedings. In addition, a new paragraph (d)(4) would specify that conviction of an aggravated felony is a mandatory ground for denial. This amendment is adopted from the prior proposed rule or aliens convicted of aggravated felonies. See 58 FR 38312, 38313 (July 16, 1993).

8 CFR 208.14 also would be amended by adding a new paragraph (e) to set forth a ground for discretionary denial. Asylum applications could be denied in the discretion of the Attorney General when the applicant can and will be deported or returned to a country in which the alien would not face persecution or harm and would have access to a full and fair procedure for determining his or her refugee status in accordance with a bilateral or multilateral arrangement with the United States governing such matters. Nothing in this provision would limit the discretion of the Attorney General to permit consideration of the application in instances where there is good reason for the applicant to remain in the United States.

8 CFR 208.16 would be amended to restrict the adjudication by Asylum Officers of claims for withholding of deportation to cases involving crewmen, stowaways, and aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), which cases come under the jurisdiction of the Asylum Officer pursuant to 8 CFR 253.1(f). This section also would be amended to specify that an alien convicted of an aggravated felony is ineligible to receive withholding of deportation. This amendment is adopted from the prior proposed rule on aliens convicted of aggravated felonies. See 58 FR 38312, 38313 (July 16, 1993).

8 CFR 208.17 would be amended to provide for service of a referral under 8 CFR 208.14(b) to the applicant, the District Director, and the Office of Refugees, Asylum, and Parole.

8 CFR 208.18(b) would be amended to provide that in a case referred to an Immigration Judge under amended 8 CFR 208.14(b), the Asylum Officer, pursuant to the authority set forth in 8 CFR 235.6(a) and 242.1(a), shall issue either an Order to Show Cause to place the applicant in deportation proceedings or a Notice to Applicant for Admission Detained for Hearing Before Immigration Judge to place the applicant in exclusion proceedings.

8 CFR 208.20 would be amended to clarify that a person eligible for work authorization as a result of being granted asylum shall receive documentation establishing such authorization expeditiously, upon application to the Service.

8 CFR 208.21 would be amended to specify that an asylee's spouse or child accompanying or following to join the asylee may not be granted asylum if the spouse or child has been convicted of an aggravated felony. This amendment is adopted from the prior proposed rule on aliens convicted of aggravated felonies. See 58 FR 38312, 38314 (July 16, 1993).

8 CFR 208.24 would be amended to clarify that the procedure stated therein for revocation of a grant of asylum shall be followed when asylum was granted by a District Director. This section also would be amended to eliminate paragraph (f), regarding the authority of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit, to review decisions to revoke asylum or withholding or withholding of deportation. This change reflects the fact that the Asylum Policy and Review Unit no longer exists.

8 CFR 236.3 and 8 CFR 242.17 would be amended to eliminate the requirement that exclusion and deportation hearings be deferred until the receipt of comments from the Department of State.

8 CFR 242.17(e) would be amended to provide that the INS may use information contained in an asylum application submitted to an Asylum Officer in accordance with 8 CFR 208.2 to form the basis for issuance of an Order to Show Cause under 8 CFR 242.1

8 CFR 274a.12(c)(8) would be amended to conform the criteria for eligibility for employment authorization to those set forth in amended 8 CFR 208.7(a). The text of 8 CFR 274a.12(c)(13) would be removed and the paragraph reserved.

8 CFR 274a.13(a) would be amended to clarify that applicants for employment authorization under 8 CFR 274a.12(a) are authorized to be employed in the United States by virtue of their immigration status, and that approval of applications for employment authorization filed under 8 CFR 274a.12(c), except for those filed under 8 CFR 274a.12(c)(8), is within the discretion of the District Director. Applications filed under 8 CFR 274a.12(c) will be adjudicated at the Service Center or at such other INS office as the Commissioner shall designate. This paragraph also would be amended to require that an application for employment authorization or for renewal of employment authorization based on a pending asylum application be filed with a fee, or with an application for waiver of such fee, and that such applications be filed either with the Service Center or with such other INS office as the Commissioner may designate.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities, based upon the following factors. This rule principally affects the adjudication of individual claims for asylum and withholding of deportation and thus would have no significant economic impact on small businesses, organizations, or state or local governmental agencies. The amendments to regulations concerning the issuance and renewal of employment authorization documents could have a small and indirect impact upon business entities by withholding employment authorization in certain cases.

The Department of Justice considers this rule to be a "significant regulatory action" under section 3(f) of Executive Order 12866, and accordingly has submitted this rule to the Office of Management and Budget for review.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Attorney General has reviewed this rule in light of section 2(c) of Executive Order 12778 and finds that the rule meets the applicable standards provided in section 2(b) of the order.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7, paragraph (b)(1) is amended by adding in proper numerical sequence Form I–589 to the forms to read as follows:

§ 103.7 Fees.

* * * * *

(b) (1) * * *

(1) * * *

* * * * *

Form I–589. For filing application for asylum or withholding of deportation—$130 per application.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

3. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

4. Section 208.1 is amended by:

a. Revising the first sentence in paragraph (a);

b. Removing in paragraph (a), in the second and fourth sentences, the phrase "Other 1, 1990" and adding in its place "(Insert date final rule is published in the **Federal Register**)";

c. Adding at the end of paragraph (a) a new sentence;

d. Revising the second sentence in paragraph (b); and

e. Removing in paragraph (c) the phase "assist the Deputy Attorney General and the Director of the Asylum Policy and Review Unit, in coordination" and adding in its place the word "coordinate", to read as follows:

§ 208.1 General.

(a) This part shall apply to all adjudications of applications for asylum or withholding of deportation, whether by an Asylum Officer or an Immigration Judge, that occur on or after (Insert date final rule is published in the **Federal Register** and all adjudications or referrals by an Asylum Officer in accordance with § 208.14. * * * The provisions of this part relating to a person convicted of an aggravated felony, a defined in section 101(a)(43) of the Act (8 U.S.C. 1101(a)(43)), shall apply to applications for asylum or withholding of deportation that are filed on or after November 29, 1990.

(b) * * * These shall include a corps of professional Asylum Officers who are to receive special training in international human rights law, conditions in countries of origin, and other relevant national and international refugee laws. * * *

* * * * *

5. Section 208.2 is amended by:

a. Revising the second sentence in paragraph (a); and

b. Revising the second and third sentences in paragraph (b), to read as follows:

§ 208.2 Jurisdiction.

(a) * * * All such applications shall be either adjudicated or referred by Asylum Officers under this part in accordance with § 208.14, provided that with the exception of cases involving crewman, stowaways, or aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), which are within the jurisdiction of an Asylum Officer pursuant to 8 CFR 253.1(f), an Asylum Officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h).

(b) * * * The Immigration Judge shall make a determination on such claims. In cases where the adjudication of an application has been referred in accordance with § 208.14, that application shall be forwarded with the charging document to the Office of the Immigration Judge by the Office of Refugees, Asylum, and Parole.

6. Section 208.3 is amended by:

a. Removing from the first sentence in paragraph (a) the word "quadruplicate" and adding in its place "triplicate";

b. Revising the third and fourth sentences in paragraph (a); and

c. Adding new paragraphs (c) and (d), to read as follows:

§ 208.3 Form of application.

(a) * * * An application shall be accompanied by one completed Form FD–258 (Fingerprint Card) for every individual included on the application who is fourteen years of age or older. Additional supporting material may also accompany the application and, if so, must be provided in triplicate. Forms I–589 and FD–258 shall be available from the INS and the Offices of Immigration Judges. * * *

* * * * *

(c) The application (Form I–589) shall be filed under the following conditions and shall have the following consequences, as shall be noted in the instructions on the application:

(1) Information provided in completing the application may be used as a basis for the institution of, or as evidence in, exclusion proceedings in accordance with part 236 of this chapter or deportation proceedings in accordance with part 242 of this chapter;

(2) Information provided in the application may be used to satisfy the burden of proof of the INS in establishing the applicant's deportability under part 242 of this chapter;

(3) Mailing to the address provided on the application shall constitute adequate service of all notices or other documents, including an Order to Show Cause (Form I–221) or a Notice to Applicant for Admission Detained for Hearing Before Immigration Judge (Form I–122);

(4) The signatures on the application of the applicant and anyone who assists the applicant are made subject to penalty of perjury and, if the applicant later claims ignorance of the contents of the application, may provide the basis for denial of the claim;

(5) An application that is incomplete or lacks a response to each of the enumerated questions may be referred to an Immigration Judge for adjudication or may be denied by the Asylum Officer; and

(6) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act (8 U.S.C. 1324c). An application for asylum or withholding of deportation that does not include a response to each of the questions contained in the Form I–589, that is unsigned, that is unaccompanied by the required materials specified in paragraph (a) of this section, or that is unaccompanied by the required fee or an application for fee waiver, in incomplete.

(d) The applicant must sign the application under penalty of perjury. If a person other than an immediate relative of the applicant has prepared or assisted the applicant in preparing the application, that person also must sign the application under penalty of prejury and provide his or her full mailing address.

7. Section 208.4 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) *With the Service Center by mail.* Except as provided in paragraphs (b) and (c) of this section, applications for asylum or withholding of deportation shall be filed directly by mail with the Service Center servicing the Asylum Office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port of entry from which the alien seeks admission to the United States. The addresses of the Service Centers shall be made available through the local INS Information Unit. Upon receipt of the application, except in the case of an alien who has been convicted of an aggravated felony, the Service Center shall forward a copy of the application to the Department of State.

* * * * *

(d) The applicant shall include the appropriate fee as prescribed in 8 CFR 103.7(b)(1), or application for waiver of such fee as provided in 8 CFR 103.7(c)(1), when submitting the application.

8. Section 208.5 is amended by removing from paragraph (b) "235" and adding in its place "236".

9. Section 208.7 is amended by:

a. Revising the section heading;

b. Revising paragraph (a);

c. Revising the introductory text of paragraph (b);

d. Adding a new paragraph (b)(3); and

e. In paragraph (d), removing the word "sixty" and adding in its place "ninety", to read as follows:

§ 208.7 Employment authorization.

(a)(1) An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to submit an application for employment authorization (Form I–765). The application for employment authorization shall be submitted, with fee or application for waiver of such fee, no earlier than 150 days after the date on which the application for asylum has been filed in accordance with § 208.4 of this part. If an application for waiver of the fee is denied, the INS shall not issue a document evidencing employment authorization until the fee is paid. An applicant whose application for asylum has been denied by an Immigration Judge or by an Asylum Officer within the 150-day period shall not be eligible to apply for employment authorization. After the expiration of the 150-day period, the INS shall have 30 days from the date of filing of an initial application for employment authorization to grant or deny that application. If the INS fails to adjudicate the application within that period, the alien shall be eligible for interim employment authorization under this chapter. If an application for asylum is denied by an Immigration Judge or an Asylum Officer within the 30-day period, but prior to a decision on the application for employment authorization, the application for employment authorization shall be denied.

(2) An applicant who has been convicted of an aggravated felony shall not be granted employment authorization. In cases where an applicant has previously received employment authorization and his or her application for asylum or withholding of deportation is denied because the applicant has been convicted of an aggravated felony, the employment authorization shall terminate as of the date of the denial.

(3) For purposes of this paragraph, the limitations on the time periods within which the alien may not apply for employment authorization and within which the INS must respond to any such application shall be construed as running only after the alien has filed a complete asylum application in accordance with § 208.3. Such time limits shall be extended by the equivalent of any delay requested or caused by the applicant. Such time limits also shall be extended by the equivalent of the time between issuance of a request for evidence under 8 CFR 103.2(b)(8) and the receipt of the applicant's response to such request.

(4) An applicant who inexcusably fails to appear for a scheduled interview before an Asylum Officer or hearing before an Immigration Judge shall not be granted employment authorization.

(b) Subject to the restrictions in paragraph (b)(3) of this section, employment authorization shall be renewable, in increments to be determined by the Commissioner, for the continuous period of time necessary for the Asylum Officer or Immigration Judge to decide the asylum application and, if necessary, for final adjudication of any administrative or judicial review.

* * * * *

(3) If an application for asylum filed on or after November 29, 1990 is denied pursuant to § 208.14(c)(4) or § 208.16(c)(2)(ii) because the applicant has been convicted of an aggravated felony, any employment authorization previously issued under § 208.7(a) shall automatically terminate as of the date of the denial.

* * * * *

10. Section 208.9 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b);

c. Revising paragraph (c);

d. Adding a new sentence at the end of paragraph (d);

e. Revising paragraph (e); and

f. Adding a new paragraph (g), to read as follows:

§ 208.9 Interview and procedure.

(a) Interviews on asylum applications are discretionary. For each application for asylum or withholding of deportation within the jurisdiction of the Office of Refugees, Asylum, and Parole, an interview may be conducted by an Asylum Officer, either at the time of the application or at a later date to be determined by the Officer. Applications within the jurisdiction of an Immigration Judge are to be adjudicated under the rules of procedure established by the Executive Office for Immigration Review in parts 3, 236, and 242 of this chapter.

(b) The Asylum Officer shall conduct the interview in a nonadversarial manner and, at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for the form of relief sought. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General. The applicant may have counsel or a representative present and may submit affidavits of witnesses.

(c) The Asylum Officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(d) * * * Upon completion of the interview, the applicant also shall be informed that he or she must appear in person to receive and to acknowledge receipt of the decision of the Asylum Officer, and any other accompanying material, at a time and place designated by the Asylum Officer.

(e) The Asylum Officer shall consider evidence submitted by the applicant together with his or her asylum application, as well as any evidence submitted by the applicant before or at the interview if an interview is conducted. As a matter of discretion, the Asylum Officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence. Any such extension shall extend by equivalent time the periods specified by § 208.7 for the filing and adjudication of employment authorization applications.

* * * * *

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the INS, a competent interpreter fluent in both English and the applicant's native language. The interpreter must be at least 18 years of age. Neither the applicant's attorney of record nor a witness testifying on the applicant's behalf may serve as the applicant's interpreter. Unexcused failure to meet this requirement may be considered an unexcused failure to appear for the interview for purposes of § 208.10.

11. Section 208.11 is amended by:

a. Revising the section heading;

b. Removing paragraph (b);

c. Redesignating paragraphs (a) and (c) as paragraphs (b) and (d), respectively;

d. Adding a new paragraph (a);

e. Revising newly redesignated paragraph (b); and

f. Adding a new paragraph (c), to read as follows:

§ 208.11 Comments from the Department of State.

(a) At its option, the Department of State may provide detailed country conditions information addressing the specific conditions relevant to eligibility for refugee status according to the grounds specified in section 101(a)(42) of the Act, 8 U.S.C. 1101(a)(42). Any such information relied upon by an Immigration Judge in deciding a claim for asylum or withholding of deportation shall be made part of the record and the parties shall be provided an opportunity to review and respond to such information prior to the issuance of a decision.

(b) At its option, the Department of State also may comment on an application it receives pursuant to § 208.4(a), § 236.3, or § 242.17 of this chapter by providing:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her own experiences;

(2) Information about whether persons who are similarly situated to the applicant are persecuted in his or her country of nationality or habitual residence and the frequency of such persecution;

(3) Such other information as it deems relevant to deciding whether to grant or to deny the application.

(c) Asylum Officers and Immigration Judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate. Any such comments shall be made part of the record and the parties shall be provided an opportunity to review and respond to such comments prior to the issuance of a decision.

* * * * *

§ 208.12 [Amended]

12. In § 208.12, paragraph (a) is amended by removing from the first sentence the term, "the Asylum Policy and Review Unit," and by removing the second sentence in its entirety.

§ 208.13 [Amended]

13. In § 208.13, paragraph (b)(1)(ii) is amended by removing from the last sentence the citation "§ 208.14(c)" and adding in it place "§ 208.14(d)".

14. Section 208.14 is amended by:

a. Revising the section heading;

b. Removing in paragraph (a) the words "or Asylum Officer";

c. Removing in paragraph (a) the phrase "paragraph (c)" and adding in its place the phrase "paragraph (d)";

e. Redesignating paragraph (b) and (c) as paragraphs (c) and (d) respectively;

f. Adding a new paragraph (b);

g. Removing in redesignated paragraph (d)(2) the word "or" at the end of the paragraph;

h. Removing in redesignated paragraph (d)(3) the "." at the end of the paragraph and adding in its place "; or";

i. Adding a new paragraph (d)(4); and

j. Adding a new paragraph (e), to read as follows:

§ 208.14 Approval, denial, or referral of application.

* * * * *

(b) An Asylum Officer may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) unless otherwise prohibited by paragraph (d) of this section, except that an Asylum Officer shall not deny asylum in the case of an alien who shall appear to be deportable under section 241 of the Act (8 U.S.C. 1251) or excludable under section 212 of the Act (8 U.S.C. 1182), other than a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act (8 U.S.C. 1225(c)). In such cases, the Asylum Officer shall either grant asylum or refer the application to an Immigration Judge for adjudication in deportation or exclusion proceedings commenced in accordance with part 236 or part 242 of this chapter, respectively. The Asylum Officer shall notify the applicant of a referral under this section. Adjudication of an asylum application filed by a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act (8 U.S.C. 1225(c)) shall be conducted under the procedures set forth in § 253.1(f) of this chapter.

* * * * *

(d) * * *

(4) The alien has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43).

(e) *Discretionary denials.* An application from an alien who is otherwise eligible for asylum may be denied in the discretion of the Attorney General if the alien can and will be deported or returned to a country in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States governing such matter.

15. Section 208.16 is amended by revising paragraph (a) and paragraph (c)(2)(ii) to read as follows:

§ 208.16 Entitlement to withholding of deportation.

(a) *Consideration of application for withholding of deportation.* With the exception of cases that are within the jurisdiction of an Asylum Officer pursuant to 8 CFR 253.1(f), an Asylum Officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). If the application for asylum is granted, no decision on withholding of deportation will be made unless and until the grant of asylum is later revoked or terminated and deportation proceedings at which a new request for withholding of deportation is made are commenced. In such proceedings, an Immigration Judge may adjudicate both a renewed asylum claim and a request for withholding of deportation simultaneously whether or not asylum is granted.

* * * * *

(c) * * *

(2) * * *

(ii) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States. An alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime and to constitute a danger to the community of the United States.

* * * * *

16. Section 208.17 is revised to read as follows:

§ 208.17 Decision.

The decision of an Asylum Officer to grant or to deny asylum or withholding of deportation, or to refer an application in accordance with § 208.14(b) shall be communicated in writing to the applicant, the Assistant Commissioner, Refugees, Asylum, and Parole, and the District Director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant sought admission to the United States. A letter communicating denial of the application shall state why asylum or withholding of deportation was denied. The letter also shall contain an assessment of the applicant's credibility, unless the application was denied pursuant to § 208.14(c)(4) or § 208.16(c)(2)(ii). Pursuant to § 208.9(d), an applicant may be required to appear in person to receive and to acknowledge receipt of the decision.

17. Section 208.18 is amended by:

a. Removing from the second sentence in paragraph (a) the phrase ", assisted by the Asylum Policy and Review Unit,";

b. Removing from the third sentence in paragraph (a) the phrase ", or to the Asylum Policy and Review Unit,"; and

c. Revising paragraph (b), to read as follows:

§ 208.18 Review of decisions and appeal.

* * * * *

(b) Except as provided in § 253.1(f) of this chapter, there shall be no appeal from a decision of an Asylum Officer. In a case referred to an Immigration Judge in accordance with § 208.14(b), the Supervisory Asylum Officer, pursuant to the authority set forth in §§ 235.6(a) and § 242.1(a) of this chapter, shall issue respectively a Notice to Applicant for Admission Detained for Hearing Before Immigration Judge (Form I-122) or an Order to Show Cause (Form I-221).

* * * * *

18. Section 208.20 is revised to read as follows:

§ 208.20 Approval and employment authorization.

When an alien's application for asylum is granted, he or she is granted asylum status for an indefinite period. All approved asylees and their eligible derivative family members are authorized to be employed in the United States pursuant to § 274a.12(a)(5) of this chapter and must, if intending to be employed, apply to the INS for a document evidencing such authorization. The INS shall issue such document within 30 days of the receipt of the application therefor.

19. Section 208.21 is amended by:

a. Revising the introductory text of paragraph (a);

b. Removing at the end of paragraph (a)(2) the word "or";

c. Removing at the end of paragraph (a)(3) the "." and adding in its place "; or";

d. Adding a new paragraph (a)(4), to read as follows:

§ 208.21 Admission of asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, or child, as defined in section 101(b)(1) (A), (B), (C), (D), (E) or (F) of the Act, also may be granted asylum if accompanying or following to join the principal alien who was granted asylum, unless it is determined that: * * *

* * * * *

(4) The spouse or child has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43).

* * * * *

20. Section 208.24 is amended by:

a. Revising the heading and introductory text of paragraph (a);

b. Removing in paragraph (a)(3), the citation "208.14(c)" and adding in its place the citation "208.14(d)";

c. Removing paragraph (f); and

d. Redesignating paragraph (g) as paragraph (f), to read as follows:

§ 208.24 Revocation of asylum or withholding of deportation.

(a) *Revocation of asylum by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner and following a hearing before an Asylum Officer, the grant to an alien of asylum made under the jurisdiction of an Asylum Officer or a District Director may be revoked if, by a preponderance of the evidence, the INS establishes that: * * *

* * * * *

PART 236—EXCLUSION OF ALIENS

21. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

22. Section 236.3 is amended by:

a. Revising the introductory text of paragraph (a);

b. Removing from the first sentence in paragraph (b) the citation "§ 208.4(b)" and adding in its place the citation "§ 208.4(c)"; and

c. Revising the second sentence in paragraph (b), to read as follows:

§ 236.3 Applications for asylum or withholding of deportation.

(a) If an alien expresses fear of persecution or harm upon return to his or her country of origin or to a country to which the alien may be deported after exclusion from the United States pursuant to part 237 of this chapter, and the alien has not previously filed an application for asylum or withholding of deportation that has been referred to the Immigration Judge by an Asylum Officer in accordance with § 208.14(b) of this chapter, the Immigration Judge shall: * * *

(b) * * * Upon receipt of an application that has not been referred by an Asylum Officer, the Office of the Immigration Judge shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. * * *

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

23. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

24. Section 242.17 is amended by:

a. Revising the introductory text of paragraph (c)(2);

b. Removing from the first sentence in paragraph (c)(3) the citation "§ 208.4(b)" and adding in its place the citation "§ 208.4(c)";

c. Revising the second sentence in paragraph (c)(3); and

d. Adding in paragraph (e) a new sentence immediately after the first sentence, to read as follows:

§ 242.17 Ancillary matters, applications.

* * * * *

(c) * * *

(2) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be deported pursuant to paragraph (c)(1) of this section, and the alien has not previously filed an application for asylum or withholding of deportation that has been referred to the Immigration Judge by an Asylum Officer in accordance with 8 CFR 208.14(b), the Immigration Judge shall: * * *

(3) * * * Upon receipt of an application that has not been referred by an Asylum Officer, the Office of the Immigration Judge shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. * * *

* * * * *

(e) * * * However, nothing in this section shall prohibit the INS from using information supplied in an application for asylum or withholding of deportation submitted to an Asylum Officer pursuant to 8 CFR 208.2 as the basis for issuance of an Order to Show Cause under 8 CFR 242.1. * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

25. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

26. Section 274a.12 is amended by:

a. Revising paragraph (c)(8);

b. Revising the first sentence in paragraph (c)(10); and

c. Removing and reserving paragraph (c)(13), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(8) An alien who has filed a complete application for asylum or withholding of deportation pursuant to part 208 of this chapter, whose application has not been decided, and who is eligible to apply for employment authorization under § 208.7 of this chapter because the 150-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of § 208.7 in increments to be determined by the Commissioner and shall expire on a specified date.

* * * * *

(10) An alien who has filed an application for suspension of deportation pursuant to part 244 of this chapter, if the alien establishes an economic need to work. * * *

* * * * *

(13) [Reserved].

* * * * *

27. Section 274a.13 is amended by revising paragraph (a) and the first sentence of paragraph (d), to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* Aliens authorized to be employed under § 274a.12(a) (3)–(8) and (10)–(13) must file an application for employment authorization (Form I–765) in order to obtain documentation evidencing this fact.

(1) Aliens who may apply for employment authorization under § 274a.12(c), except for those who may apply under § 274a.12(c)(8), shall file a Form I–765 with the district director having jurisdiction over the applicant's residence, or the district director having jurisdiction over the port of entry at which the alien applies, or with such other INS office as the Commissioner may designate. The approval of applications filed under § 274a.12(c), except for § 274a.12(c)(8), shall be within the discretion of the district director. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with instructions on Form I–765.

(2) An initial application for employment authorization (Form I–765) filed under § 274a.12(c)(8) shall be filed, with fee or with application for waiver of such fee, in accordance with the instructions on or attached to Form I–765, with the appropriate Service Center or with such other INS office as the Commissioner may designate. The applicant also must submit a copy of the underlying application for asylum or withholding of deportation, together with evidence that the application has been field in accordance with part 208 of this chapter. An application for an initial employment authorization filed in relation to a pending claim for asylum shall be adjudicated in accordance with § 208.7 of this chapter. An application for renewal of employment authorization submitted in relation to a pending claim for asylum, as provided for in § 208.7 of this chapter, shall be filed, with fee or with application for waiver of such fee, in accordance with the instructions on or attached to Form I–765, with the appropriate Service Center or with such other INS office as the Commissioner may designate.

* * * * *

(d) *Interim employment authorization.* The district director shall adjudicate the application within 90 days from the date of receipt of the application by the INS; provided, however, that in cases where the alien is temporarily barred from seeking employment authorization because of a pending asylum application or exclusion or deportation proceedings, the district director shall adjudicate the employment authorization within 30 days of receipt. * * *

Dated: March 24, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-7500 Filed 3-29-94; 8:45 am]

BILLING CODE 4410-10-M

UNITED STATES ENRICHMENT CORPORATION

10 CFR Part 1102

Freedom of Information Act Regulations

AGENCY: United States Enrichment Corporation.

ACTION: Proposed rule.

SUMMARY: The United States Enrichment Corporation (Corporation), a Government corporation establish by the Energy Policy Act of 1992, is issuing these proposed implementing regulations pursuant to the Freedom of Information Act (FOIA). The implementing regulations would establish procedures for the disclosure of information by the Corporation under FOIA. The objective of these implementing regulations is to facilitate the exercise of rights conferred on the public by FOIA and to ensure that the Corporation's determinations regarding disclosure of information is in compliance with FOIA. In conjunction with these implementing regulations, the Corporation is soliciting comments from interest parties that it will review and, where appropriate, reflect in the final rule.

DATES: Comments must be submitted on or before April 29, 1994.

ADDRESSES: Comments may be mail to the Office of General Counsel, United States Enrichment Corporation, 2 Democracy Center, 6903 Rockledge Drive, Bethesda, Maryland 20817.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, General Counsel, (301) 564-3200.

SUPPLEMENTARY INFORMATION:

Background

The United States Enrichment Corporation (Corporation), an agency and instrumentality of the United States, was established by the Energy Policy Act of 1992 (P.L. 102-486; 42 U.S.C. 2297 *et seq.*), as a wholly owned Government corporation. On July 1, 1993, the Corporation assumed responsibility for the majority of the uranium enrichment enterprise activities formerly conducted by the U.S. Department of Energy. Since that date, the Corporation has been the exclusive marketing agent for the U.S. Government for entering into contracts for providing enriched uranium and uranium enrichment and related services. In connection with its legitimate activities, the Corporation possesses records that may fall within the scope of the Freedom of Information Act (FOIA), 5 U.S.C. 552. Consequently, the Corporation is promulgating these implementing regulations pursuant to 5 U.S.C. 552(a)(4)(A) to ensure compliance with the provisions of FOIA.

In general, FOIA provides for public access to records in the possession of the Corporation, while preserving the Corporation's ability to protect certain specifically exempted material from disclosure. Specifically, FOIA requests the Corporation to publish certain information in the **Federal Register**, including a description of the organization of the Corporation and substantive rules of general applicability, and make other information available for public inspection and copying, including statements of policy and interpretations adopted by the Corporation which are not published in the **Federal Register**. FOIA also requires the Corporation to make records available in response to a request which (i) reasonably describes such records; and (ii) is made in accordance with these implementing regulations, which state the time, place, fees and procedures to be followed. The Corporation, however, will not treat records that have been prepared by a contractor, and are available to the Corporation pursuant to the terms of a contract between the Corporation and the contractor, but which have not been delivered to the Corporation, as "records" available in response to a request made in accordance with these implementing regulations. Finally, FOIA exempts specific categories of matters from disclosure pursuant to a request for information made under these implementing regulations. For example 5 U.S.C. 552(b)(3) exempts those matters which are "specifically exempted from disclosure by statue * * * provided that such statute" meets certain criteria. Recognizing the unique status of the Corporation as a government agency with the statutory mission to "operate as a business enterprise on a profitable and efficient basis," Congress specifically provided the Corporation with authority to "protect trade secrets and commercial or financial information to the same extent as a privately owned corporation," 42 U.S.C. 2297b-13(a). The Corporation interprets 42 U.S.C. 2297b-13(a) as being a statute covered by section (b)(3) of FOIA and anticipates that a significant amount of the Corporation's records will fall under this exemption.

Proposed Rule

As a whole, these implementing regulations provide the means necessary for the public to exercise fully the rights provided under FOIA. Section 1102.3 establishes the Corporation's policy regarding the disclosure of Corporation records pursuant to FOIA. Section 1102.4 establishes the availability of materials to the public as required by 5 U.S.C. 552(a)(2) and (5). Section 1102.5 establishes procedures by which the public can request access to Corporation records which are not covered by 5 U.S.C. 552(a)(1) or (2) and time requirements regarding the Corporation's response to such requests. Section 1102.6 establishes nine categories of matters which are exempt from all publication and disclosure requirements of FOIA, provides for the disclosure of any reasonably segregable portion of an exempted record subsequent to deletion of exempted portions of the record, and establishes guidance for the Corporation in relation to providing a requesting party with information regarding exempt material. Section1102.7 establishes procedures for responding to a request for disclosure of records made pursuant to these implementing regulations. Section 1102.8 establishes procedures for denying a request for disclosure of records made pursuant to these implementing regulations. Section 1102.9 establishes procedures for the appeal of a denial of a request for disclosure of records made pursuant to these implementing regulations. Section 1102.10 establishes the schedule of fees applicable to the processing of requests under these implementing regulations and also establishes procedures and guidance for determining when such fees should be waived or reduced. Section 1102.11 establishes procedures to notify submitters of information containing confidential commercial information, as defined by Executive order 12600, with notice of a request for such information submitted pursuant to these implementing regulations.

Paperwork Reduction Act

The Corporation certifies that these implementing regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Executive Order 12291

These implementing regulations are not a "major rule" within the meaning