

SUBCHAPTER H—PROGRAM REGULATIONS (CONTINUED)

PART 1940—GENERAL

Subparts A-F [Reserved]

Subpart G—Environmental Program

Sec.
1940.301 Purpose.
1940.302 Definitions.
1940.303 General policy.
1940.304 Special policy.
1940.305 Policy implementation.
1940.306 Environmental responsibilities within the National Office.
1940.307 Environmental responsibilities within the State Office.
1940.308 Environmental responsibilities at the District and County Office levels.
1940.309 Responsibilities of the prospective applicant.
1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.
1940.311 Environmental assessments for Class I actions.
1940.312 Environmental assessments for Class II actions.
1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).
1940.314 Criteria for determining a significant environmental impact.
1940.315 Timing of the environmental review process.
1940.316 Responsible officials for the environmental review process.
1940.317 Methods for ensuring proper implementation of categorical exclusions.
1940.318 Completing environmental assessments for Class II actions.
1940.319 Completing environmental assessments for Class I actions.
1940.320 Preparing EISs.
1940.321 Use of completed EIS.
1940.322 Record of decision.
1940.323 Preparing supplements to EIS's.
1940.324 Adoption of EIS or environmental assessment prepared by another Federal Agency.
1940.325 FmHA or its successor agency under Public Law 103-354 as a cooperating Agency.
1940.326 FmHA or its successor agency under Public Law 103-354 as a lead Agency.
1940.327 Tiering.
1940.328 State Environmental Policy Acts.
1940.329 Commenting on other Agencies' EIS's.
1940.330 Monitoring.
1940.331 Public involvement.
1940.332 Emergencies.

1940.333 Applicability to planning assistance.
1940.334 Direct participation of State Agencies in the preparation of FmHA or its successor agency under Public Law 103-354 EISs.
1940.335 Environmental review of FmHA or its successor agency under Public Law 103-354 proposals for legislation.
1940.336 Contracting for professional services.
1940.337-1940.349 [Reserved]
1940.350 Office of Management and Budget (OMB) control number.
EXHIBIT A TO SUBPART G OF PART 1940—DEPARTMENTAL REGULATION
EXHIBIT B TO SUBPART G OF PART 1940—DEVELOPMENT AND IMPLEMENTATION OF NATURAL RESOURCE MANAGEMENT GUIDE
EXHIBIT C TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE FARMLAND PROTECTION POLICY ACT; EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT; EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS; AND DEPARTMENTAL REGULATION 9500-3, LAND USE POLICY
EXHIBIT D TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE ENDANGERED SPECIES ACT
EXHIBIT E TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE WILD AND SCENIC RIVERS ACT
EXHIBIT F TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE COASTAL BARRIER RESOURCES ACT
EXHIBIT G TO SUBPART G OF PART 1940 [RESERVED]
EXHIBIT H TO SUBPART G OF PART 1940—ENVIRONMENTAL ASSESSMENT FOR CLASS II ACTIONS
EXHIBIT I TO SUBPART G OF PART 1940—FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT
EXHIBIT J TO SUBPART G OF PART 1940—LOCATIONS AND TELEPHONE NUMBERS OF FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION'S REGIONAL OFFICES
EXHIBIT K TO SUBPART G OF PART 1940—LOCATIONS AND TELEPHONE NUMBERS OF U.S. FISH AND WILDLIFE SERVICE'S WETLAND COORDINATORS
EXHIBIT L TO SUBPART G OF PART 1940—EXCEPTIONS TO RESTRICTIONS OF COASTAL BARRIER RESOURCES ACT
EXHIBIT M TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE CONSERVATION OF WETLANDS AND HIGHLY ERODIBLE LAND AFFECTING FARMER PROGRAM LOANS AND LOANS TO INDIAN TRIBES AND TRIBAL CORPORATIONS

Subpart H [Reserved]

§ 1940.301

Subpart I—Truth in Lending—Real Estate Settlement Procedures

- 1940.401 Truth in lending.
- 1940.402–1940.405 [Reserved]
- 1940.406 Real estate settlement procedures.

Subparts J–K [Reserved]

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

- 1940.551 Purpose and general policy.
- 1940.552 Definitions.
- 1940.553–1940.559 [Reserved]
- 1940.560 Guarantee Rural Rental Housing Program.
- 1940.561–1940.562 [Reserved]
- 1940.563 Section 502 non-subsidized guaranteed Rural Housing (RH) loans.
- 1940.564 Section 502 subsidized guaranteed Rural Housing loans.
- 1940.565 Section 502 subsidized Rural Housing loans.
- 1940.566 Section 504 Housing Repair loans.
- 1940.567 Section 504 Housing Repair grants.
- 1940.568 Single Family Housing programs appropriations not allocated by State.
- 1940.569–1940.574 [Reserved]
- 1940.575 Section 515 Rural Rental Housing (RRH) loans.
- 1940.576 Rental Assistance (RA) for new construction.
- 1940.577 Rental Assistance (RA) for existing projects.
- 1940.578 Housing Preservation Grant (HPG) program.
- 1940.579 Multiple Family Housing appropriations not allocated by State.
- 1940.580–1940.584 [Reserved]
- 1940.585 Community Facility loans.
- 1940.586–1940.587 [Reserved]
- 1940.588 Business and Industry Guaranteed and Direct Loans.
- 1940.589 Rural Business Enterprise Grants.
- 1940.590 [Reserved]
- 1940.591 Community Program Guaranteed loans.
- 1940.592 Community facilities grants.
- 1940.593 Rural Business Opportunity Grants.
- 1940.594–1940.600 [Reserved]
- EXHIBIT A TO SUBPART L OF PART 1940 [RESERVED]
- EXHIBIT B TO SUBPART L OF PART 1940—SECTION 515 NONPROFIT SET ASIDE (NPSA)
- EXHIBIT C TO SUBPART L OF PART 1940—HOUSING IN UNDERSERVED AREAS

Subparts M–S [Reserved]

Subpart T—System for Delivery of Certain Rural Development Programs

- 1940.951 General.
- 1940.952 [Reserved]
- 1940.953 Definitions.

7 CFR Ch. XVIII (1–1–09 Edition)

- 1940.954 State participation.
- 1940.955 Distribution of program funds to designated States.
- 1940.956 State rural economic development review panel.
- 1940.957 State coordinator.
- 1940.958 Designated agency.
- 1940.959 Area plan.
- 1940.960 Federal employee panel members.
- 1940.961 Allocation of appropriated funds.
- 1940.962 Authority to transfer direct loan amounts.
- 1940.963 Authority to transfer guaranteed loan amounts.
- 1940.964 [Reserved]
- 1940.965 Processing project preapplications/applications.
- 1940.966–1940.967 [Reserved]
- 1940.968 Rural Economic Development Review Panel Grant (Panel Grant).
- 1940.969 Forms, exhibits, and subparts.
- 1940.970 [Reserved]
- 1940.971 Delegation of authority.
- 1940.972–1940.999 [Reserved]
- 1940.1000 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subparts A–F [Reserved]

Subpart G—Environmental Program

SOURCE: 53 FR 36240, Sept. 19, 1988, unless otherwise noted.

§ 1940.301 Purpose.

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354. It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA or its successor agency under Public Law 103–354 decision-making process is also outlined.

(b) This subpart is intended to be consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR parts 1500–1508. CEQ's regulations will not be repeated in this subpart except when essential for clarification of important

procedural or substantive points. Otherwise, citations to applicable sections of the regulations will be provided. The CEQ regulations will be available at all FmHA or its successor agency under Public Law 103-354 offices.

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

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

(2) Safe Drinking Water Act—Section 1424(e), 42 U.S.C. 300h;

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

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

(5) The National Historic Preservation Act, 16 U.S.C. 470 (See subpart F of part 1901 of this chapter for more specific implementation procedures);

(6) Archaeological and Historic Preservation Act, 16 U.S.C. 469 (See subpart F of part 1901 of this chapter for more specific implementation procedures);

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

(8) Farmland Protection Policy Act, subtitle I, Pub. L. 97-98;

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

(10) Executive Order 11593, Protection and Enhancement of the Cultural Environment (See subpart F of part 1901 of this chapter for more specific implementation procedures);

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

(12) Executive Order 11988, Floodplain Management;

(13) Executive Order 11990, Protection of Wetlands;

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

(15) Title 7, part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection, and Management of the Cultural Environment (See subpart F of part 1901 of this chapter for more specific implementation procedures);

(16) Title 7, part 658, Code of Federal Regulations, Department of Agriculture, Soil Conservation Service, Farmland Protection Policy;

(17) Title 87, part 12, Code of Federal Regulations, Highly Erodible Land and Wetland Conservation;

(18) Departmental Regulation 9500-3, Land Use Policy (See exhibit A of this subpart);

(19) Departmental Regulation 9500-4, Fish and Wildlife Policy.

(d) The primary objectives of this subpart are for the Agency to make better decisions by taking into account potential environmental impacts of proposed projects and by working with FmHA or its successor agency under Public Law 103-354 applicants, other Federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. To accomplish these objectives, the identification of potentially significant impacts on the human environment is mandated to occur early in the Agency's planning and decisionmaking processes. Important decision points are identified. The completion of the environmental review process is coordinated with these decision points, and this review must be completed prior to the Agency's first major decision on whether or not to participate in the proposal. This early availability of the results of the environmental review process is intended to ensure that Agency decisions are based on an understanding of their environmental consequence, as well as the consequences of alternative courses of action.

(e) Reducing delays, duplication of effort, and superfluous analyses are provided for in this subpart. FmHA or its successor agency under Public Law 103-354 environmental documents are to be supported by accurate analyses and will concentrate on the issues that

§ 1940.302

are timely and relevant to the action in question, rather than amassing needless detail. Such documents and their preparation and review will be coordinated with other Federal or State agencies jointly participating in proposed actions or related actions, in order to avoid duplication of effort, and to achieve a coordinated and timely response.

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

(g) The FmHA or its successor agency under Public Law 103-354 officials responsible for the environmental review process are identified.

(h) The FmHA or its successor agency under Public Law 103-354 actions covered by this subpart include:

(1) Financial assistance to include grants, loans, and guarantees,

(2) Subdivision approvals,

(3) The management, leasing and sale of inventory property, and

(4) Other major federal actions such as proposals for legislation and the issuance of regulations.

§ 1940.302 Definitions.

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

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

(b) *Environmental review documents.* The documents required by this subpart for the purpose of documenting FmHA or its successor agency under Public Law 103-354's compliance with the environmental laws and regulations applicable to the FmHA or its successor agency under Public Law 103-

7 CFR Ch. XVIII (1-1-09 Edition)

354 actions covered in this subpart. These documents include:

(1) Form FmHA or its successor agency under Public Law 103-354 1940-22, "Environmental Checklist for Categorical Exclusions,"

(2) Form FmHA or its successor agency under Public Law 103-354 1940-21, "Environmental Assessment of Class I Action,"

(3) Environmental Assessment for Class II Actions (exhibit H of this subpart), and

(4) Environmental Impact Statements (EIS).

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

(1) A one-percent chance flood or based flood—A flood of a magnitude that occurs once every 100 years on the average. Within any one-year period there is one chance in 100 of the occurrence of such a flood. Most importantly, however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20-year period, the length of time commonly defined as the useful life of a facility. Over a 30-year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

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

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

which case the critical action floodplain is the minimum floodplain of concern.

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

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

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

(f) *Mitigation measure.* A measure(s) included in a project or application for the purpose of avoiding, minimizing, reducing or rectifying identified, adverse environmental impacts. Examples of such measures include:

(1) The deletion, relocation, redesign or other modifications of the project's elements;

(2) The dedication to open space of environmentally sensitive areas of the project site, which would otherwise be adversely affected by the action or its indirect impacts;

(3) Soil erosion and sedimentation plans to control runoff during land-disturbing activities;

(4) The establishment of vegetative buffer zones between project sites and adjacent land uses;

(5) Protective measures recommended by environmental and conservation agencies having jurisdiction or special expertise regarding the project's impacts;

(6) Storm water management plans to control potential downstream flooding effects that would result from a project;

(7) Zoning; and

(8) Reuse of existing facilities as opposed to new construction.

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

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

(1) Alternative project sites or designs,

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

(3) The no-action alternative.

(i) *Preparer of Environmental Review Documents.* The FmHA or its successor agency under Public Law 103-354 official who is responsible for reviewing the potential environmental impacts of the proposed action and for completing the appropriate environmental review document. Under the circumstances indicated, the following Agency positions and divisions will act as the preparer of the environmental review documents covered by this subpart.

(1) *County Office.* When the approval official for the action under review is located at the County Office level, that

§ 1940.303

7 CFR Ch. XVIII (1-1-09 Edition)

official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments.

(2) *District Office.* When the approval official for the action under review is located at the District Office level, that official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments or may delegate this responsibility to either:

(i) The District Office staff member having primary responsibility for assembling the associated pre-application, application or other case materials, analyzing the materials and developing recommendations for the approval official, or

(ii) A County Office staff member having the same responsibilities as the District Office member, if the action is initiated at the County Office level.

(3) *State Program Chief.* For actions approved within the State Office, the Chief will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and II assessments or may delegate this responsibility to either:

(i) The appropriate State Office Loan Specialist, if not the State Environmental Coordinator (SEC),

(ii) An architect or engineer on the Chief's staff who is not the SEC, or

(iii) A District or County Office staff member located within the office in which the action is initiated and having the responsibilities outlined in paragraph (i)(2)(i) of this section.

(4) *State Environmental Coordinator.* EIS's for actions within the approval authority of County Supervisors, District Directors, and State Office officials.

(5) *Assistant Administrators for Programs.* Checklists, assessments, and EIS's for all actions initiated within their program office.

(6) *Program Support Staff.* Checklists, assessments, and EIS's that the Deputy Administrator for Program Operations requests be done.

(j) *Water resource project.* Includes any type of construction which would result in either impacts on water quality and the beneficial uses that water quality criteria are designed to protect or any change in the free-flowing charac-

teristics of a particular river or stream to include physical, chemical, and biological characteristics of the waterway. This definition encompasses construction projects within and along the banks of rivers or streams, as well as projects involving withdrawals from, and discharges into such rivers or streams. Projects which require Corps of Engineers dredge and fill permits are also water resource projects.

§ 1940.303 General policy.

(a) FmHA or its successor agency under Public Law 103-354 will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes.

(b) In assessing the potential environmental impacts of its actions, FmHA or its successor agency under Public Law 103-354 will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with both the technical and human aspects of environmental planning.

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

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

(e) The performance of environmental reviews and the consideration of alternatives will be initiated as early as possible in the FmHA or its successor agency under Public Law 103-354 application review process so that the Agency will be in the most flexible and objective position to deal with these considerations.

§ 1940.304 Special policy.

(a) *Land use.* (1) FmHA or its successor agency under Public Law 103-354 recognizes that its specific mission of

assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the appendix to Departmental Regulation 9500-3, Land Use Policy, which is included as exhibit A of this subpart. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as exhibit J of this subpart, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as exhibit K of this subpart. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA or its successor agency under Public Law 103-354's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that

- (i) There is no practicable alternative to the proposed action,
- (ii) The proposal conforms to the planning criteria identified in paragraph (a)(2) of this section, and
- (iii) The proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

(A) For Farmer Program loans and guarantees, and loans to Indian Tribes and Tribal Corporations, exhibit M of this subpart imposes additional and more restrictive requirements regarding wetland and highly erodible land conservation.

(B) Unless otherwise exempted by the provisions of exhibit M, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA or its

successor agency under Public Law 103-354 cannot be used.

(1) For a purpose that will contribute to excessive erosion of highly erodible land (as defined in exhibit M), or

(2) For a purpose that will contribute to conversion of wetlands (as defined in exhibit M) to produce an agricultural commodity.

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

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

(ii) The project is not inconsistent with an existing comprehensive and enforceable plan that guides growth and reflects a realistic strategy for protecting natural resources, and the project is compatible, to the extent practicable, with State, unit of local government, and private programs and policies to protect farmland. (If no such plan or policies exist, there is no FmHA or its successor agency under

Public Law 103-354 requirement that they either be prepared and adopted, as further specified in paragraph (a)(3) of this section.)

(iii) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that ensure compact community development, that is, development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate-to-high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate-to-high residential densities appropriate to local and regional needs. It is recognized that some FmHA or its successor agency under Public Law 103-354 Community Programs projects are designed to serve rural residents, such as rural water and waste disposal systems and, therefore, cannot be limited in service area to these areas contiguous with existing settlement patterns. These types of projects will be designed to primarily serve existing structures and rural residents in noncontiguous areas. Any additional capacity within the system will be limited to meet reasonable growth needs, and, to the extent practicable, be designed to meet such needs within existing settlements and areas contiguous to them.

(3) The conditions specified in paragraph (a)(2) of this section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives, along with economic and social benefits for the community and the surrounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the

criteria are adopted. Rather, projects will be reviewed and funding decisions made in light of a project's consistency with the contents of this subpart (excluding paragraph (a)(2)(ii) of this section, which would not be applicable).

(b) *Endangered species.* FmHA or its successor agency under Public Law 103-354 will not authorize, fund, or carry out any proposal or project that is likely to

(1) Jeopardize the continued existence of any plant or wildlife species listed by the Secretary of the Interior or Commerce as endangered or threatened; or

(2) Destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of the Interior or Commerce, unless FmHA or its successor agency under Public Law 103-354 has been granted an exemption for such proposal by the Endangered Species Committee pursuant to paragraph (h) of section 7 of the Endangered Species Act.

(c) *Wild and scenic rivers.* FmHA or its successor agency under Public Law 103-354 will not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA or its successor agency under Public Law 103-354 will not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area, or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

(d) *Historic and cultural properties.* As part of the environmental review process, FmHA or its successor agency under Public Law 103-354 will identify any properties that are listed in, or may be eligible for, listing in the National Register of Historic Places and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic

Preservation, through the implementation of subpart F of part 1901 of this chapter, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Coastal barriers.* Under the requirements of the Coastal Barrier Resources Act, FmHA or its successor agency under Public Law 103-354 will not provide financial assistance for any activity to be located within the Coastal Barrier Resources System unless

(1) Such activity meets the criteria for an exception, as defined in section 6 of the Act, and

(2) Consultation regarding the activity has been completed with the Secretary of the Interior.

(f) *Water and energy conservation.* FmHA or its successor agency under Public Law 103-354 will encourage the conservation of water and energy in the development of its programs and policies and will encourage applicants to incorporate all economically feasible water and energy-saving features and designs within their proposals.

(g) *Intergovernmental initiatives on important land resources.* On a broader scale, FmHA or its successor agency under Public Law 103-354 will advocate, in cooperation with other USDA agencies (through the USDA State-level committee system), the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains whenever proposed conversions to other uses

(1) Are caused or encouraged by actions or programs of a Federal Agency, or

(2) Require licensing or approval by a Federal Agency, unless other needs clearly override the benefits derived from retention of such lands.

(h) *Water quality.* FmHA or its successor agency under Public Law 103-354 will not provide financial assistance to any activity that would either impair a State water quality standard, including designated and/or existing beneficial uses that water quality criteria are designed to protect, or that would not meet antidegradation requirements.

§ 1940.305 Policy implementation.

(a) *Environmental impact analysis.* The implementation of the environmental impact analysis requirements described in this subpart serves as the primary mechanism for FmHA or its successor agency under Public Law 103-354 as follows:

(1) Incorporating environmental quality considerations into FmHA or its successor agency under Public Law 103-354 program and decision-making processes,

(2) Obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA or its successor agency under Public Law 103-354 projects, and

(3) Using all practicable means to avoid or to minimize any possible adverse environmental effects of FmHA or its successor agency under Public Law 103-354 actions.

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

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

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

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

(c) *Intergovernmental initiatives.* When commenting on proposed Federal actions subject to environmental impact statements, FmHA or its successor agency under Public Law 103–354 commentators will focus on the consistency of these actions with the appropriate State natural resource management guide. A similar focus or element will be addressed in FmHA or its successor agency under Public Law 103–354’s review of the Environmental Protection Agency’s 201 Wastewater Management Plans.

(d) *Farmland Protection Policy Act and Departmental Regulation 9500–3, Land Use Policy.* The natural resource management guide serves as a tool for implementing the requirements of the Act and the Departmental Regulation at the broad level of implementing the Agency’s programs at the State level. These requirements must also be followed in the review of applications for financial assistance or subdivision approval, as well as the disposal of real property. FmHA or its successor agency under Public Law 103–354’s implementation procedures for the project review process are contained in exhibit C of this subpart.

(e) *Endangered Species.* FmHA or its successor agency under Public Law 103–354 will implement the consultation procedures required under section 7 of the Endangered Species Act as specified in 50 CFR part 402. It is important to note that these consultation procedures apply to the disposal of real property and all FmHA or its successor agency under Public Law 103–354 applications for financial assistance and subdivision approval, including those applicants which are exempt from environmental assessments. FmHA or its successor agency under Public Law 103–354’s implementation procedures are contained in exhibit D of this subpart.

(f) *Wild and scenic rivers.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it will affect a river or portion of it, which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the De-

partment of the Interior (DOI). FmHA or its successor agency under Public Law 103–354’s procedures for completing this review are contained in exhibit E of this subpart.

(g) *Historic and cultural properties.* (1) As part of the environmental review process, FmHA or its successor agency under Public Law 103–354 will identify any properties that are listed or may be eligible for listing in the National Register of Historic Places, and located within the area of potential environmental impact. Identification will consist of consulting the published lists of the National Register and formally contacting and seeking the comments of the appropriate State Historic Preservation Officer (SHPO). Since it is not always possible from the consultation with the SHPO to determine whether historic and cultural properties are present within the project’s area of environmental impact, it may be necessary for FmHA or its successor agency under Public Law 103–354 to consult public records and other individuals and organizations, such as university archaeologists, local historical societies, etc. These latter discussions should take place before initiating a detailed site survey since they may provide reliable information that obviates the need for a survey. However, whenever insufficient information exists to document the presence or absence of potentially eligible National Register properties and where the potential for previously unidentified properties is recognized by FmHA or its successor agency under Public Law 103–354, the SHPO, or other interested parties, FmHA or its successor agency under Public Law 103–354 will conduct the necessary investigations to determine if such properties are present within the area of potential environmental impact. FmHA or its successor agency under Public Law 103–354 will involve the SHPO in the planning and formulation of any historic, cultural, architectural or archaeological testing, studies or surveys conducted to investigate the presence of such properties and will utilize persons with appropriate knowledge and experience.

(2) If the information obtained, as a result of the consultation and investigations conducted by FmHA or its

successor agency under Public Law 103-354, indicates the presence of an historic or cultural property within the area of potential environmental impact that, in the opinion of the SHPO and FmHA or its successor agency under Public Law 103-354, appear to meet the National Register Criteria (36 CFR 60.4), the property will be considered eligible for the National Register of Historic Places. If the SHPO and FmHA or its successor agency under Public Law 103-354 do not agree on the property's eligibility for the National Register or if the Secretary of the Interior or the Advisory Council on Historic Preservation so requests, FmHA or its successor agency under Public Law 103-354 will request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR part 63. Consultations will be initiated with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR part 800, through the implementation of subpart F of part 1901 of this chapter, to determine the most appropriate course of action to protect all National Register and eligible properties within the area of potential environmental impact.

(3) Further instructions detailing the procedures to be followed in considering and protecting historic and cultural properties and the responsible Agency officials are contained in subpart F of part 1901 of this chapter. These procedures will be followed whenever a proposal, considered by FmHA or its successor agency under Public Law 103-354, has the potential to affect National Register or eligible properties.

(h) *Coastal barriers.* In those States having coastal barriers within the Coastal Barrier Resources System, each application for financial assistance or subdivision approval, as well as the proposed disposal of real property, will be reviewed to determine if it would be located within the system, and, if so, whether the action must be denied on this basis or meets the Act's criteria for an exception. To accomplish the review, all affected State, District and County Offices will maintain a current set of maps, as issued by DOI, which depict those coastal barriers within their jurisdiction that

have been included in the system. FmHA or its successor agency under Public Law 103-354's implementation procedures for accomplishing this review requirement and for consulting as necessary with DOI are contained in exhibit F of this subpart. The exceptions to the restrictions of the Coastal Barrier Resources Act are contained in exhibit L of this subpart.

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

(j) *Noise abatement.* For purposes of assessing noise impacts and for determining the acceptability of housing sites in terms of their exposure to noise, FmHA or its successor agency under Public Law 103-354 has adopted and follows the standards and procedures developed by the U.S. Department of Housing and Urban Development (HUD) and contained in 24 CFR part 51 of subpart B entitled, "Noise Abatement and Control."

(k) *Water quality.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it would impair a State water quality standard or meet antidegradation requirements. When necessary, the proposed activity will be modified to protect water quality standards, including designated and/or existing beneficial uses that water quality criteria are designed to protect, and meet antidegradation requirements.

§ 1940.306 Environmental responsibilities within the National Office.

(a) *Administrator.* The Administrator of FmHA or its successor agency under Public Law 103-354 has the direct responsibility for Agency compliance with all environmental laws, Executive orders, and regulations that apply to FmHA or its successor agency under Public Law 103-354's program and administrative actions. As such, the Administrator ensures that this responsibility is adequately delegated to Agency staff and remains informed on the general status of Agency compliance, as well as the need for any necessary improvements. The Administrator is

also responsible for ensuring that the Agency's manpower and financial needs for accomplishing adequate compliance with this subpart are reflected and documented in budget requests for departmental consideration.

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

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

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

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

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

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

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

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

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

(viii) Review, as necessary, applications for funding assistance, proposed policies and regulations, and rec-

ommend their approval, disapproval, or modification after analyzing and considering their anticipated adverse environmental impacts, their benefits, and their consistency with the requirements of this subpart;

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

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

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

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

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

(2) Ensure that all proposed actions that fall under the requirements of this subpart, and that are submitted to the National Office for approval or concurrence, contain adequate analyses and documentation of their potential environmental impacts (Transfer of program funds from National Office to State Office control to enable the State Office to approve an application is not considered to be National Office approval of or concurrence in an application);

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

(4) Designate one or more staff members to serve as a program environmental coordinator, having generally

the same duties and responsibilities within the program office as the SEC has within the State Office (See § 1940.307(b) of this subpart).

§ 1940.307 Environmental responsibilities within the State Office.

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

(1) Serve as the responsible FmHA or its successor agency under Public Law 103-354 official at the State Office level for ensuring compliance with the requirements of this subpart; and

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

(b) *State Environmental Coordinator (SEC).* The SEC will:

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

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

- (i) Anticipated adverse environmental impacts,
- (ii) The anticipated benefits, and
- (iii) The action's consistency with this subpart's requirements;

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

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

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

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

(7) Provide technical assistance as needed on a project-by-project basis to

State, District, and County Office staffs;

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

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

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

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

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

(13) Coordinate for the State Director the monitoring of the State Office's compliance with this subpart and keep the State Director advised of the results of the monitoring process.

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

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

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

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

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

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

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

(c) In discussing FmHA or its successor agency under Public Law 103-354 assistance programs with potential applicants, District Directors and County Supervisors will inform them of the Agency's environmental requirements,

§ 1940.309

7 CFR Ch. XVIII (1-1-09 Edition)

as well as the environmental information needs and responsibilities that FmHA or its successor agency under Public Law 103-354 applicants are expected to address. (See §1940.309 of this subpart.)

§ 1940.309 Responsibilities of the prospective applicant.

(a) FmHA or its successor agency under Public Law 103-354 expects applicants and transferees (*and in the case of the loan guarantee programs, borrowers and transferees*) to consider the potential environmental impacts of their requests at the earliest planning stages and to develop proposals that minimize the potential to adversely impact the environment. Prospective applicants should contact County Supervisors or District Directors, as appropriate, to determine FmHA or its successor agency under Public Law 103-354's environmental requirements as soon as possible after they decide to pursue FmHA or its successor agency under Public Law 103-354 financial assistance.

(b) As specified in paragraph (c) of this section, applicants for FmHA or its successor agency under Public Law 103-354 assistance will be required to provide information necessary to FmHA or its successor agency under Public Law 103-354 to evaluate their proposal's potential environmental impacts and alternatives to them. For example, the applicant will be required to provide a complete description of the project elements and the proposed site(s) to include location maps, topographic maps, and photographs when needed. The applicant will also be required to provide data on any expected gaseous, liquid and solid wastes to be produced, including hazardous wastes as defined by the Resource Conservation and Recovery Act or State law, and all permits and/or correspondence issued by the appropriate local, State, and Federal agencies which regulate treatment and disposal practices.

(c) Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," will be used for obtaining environmental information from applicants whose proposals require an environmental assessment under the requirements of this subpart. These same

applicants must notify the appropriate State Historic Preservation Officer of the filing of the application and provide a detailed project description as specified in Item 2 of Form FmHA or its successor agency under Public Law 103-354 1940-20 and the FMI. If the applicant's proposal meets the definition of a Class II action as defined in §1940.312 of this subpart, all of Form FmHA or its successor agency under Public Law 103-354 1940-20 must be completed. If the applicant's proposal meets the definition of a Class I action as defined in §1940.311 of this subpart, the entire form need not be completed, but just the face of the form and categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI. As an exception to the foregoing statement, an applicant for an action that is normally categorically excluded but requires a Class I assessment for any of the reasons stated in §1940.317(e) of this subpart is not required to complete Form FmHA or its successor agency under Public Law 103-354 1940-20. Additionally, for Class I actions within the Farm Programs, a site visit by the FmHA or its successor agency under Public Law 103-354 official completing the environmental assessment obviates the need for the applicant to complete any of the form, and the adoption by FmHA or its successor agency under Public Law 103-354 of a Soil Conservation Service (SCS) environmental assessment or evaluation for the action obviates the need to complete the form for either a Class I or Class II action.

(d) Applicants will ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FmHA or its successor agency under Public Law 103-354 office processing the application. Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FmHA or its successor agency under Public Law 103-354.

(e) During the period of application review and processing, applicants will not take any actions with respect to their proposed undertakings which are the subject of the application and which would have an adverse impact on the environment or limit the range of alternatives. This requirement does

not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

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

(g) Any applicant that is directly and adversely affected by an administrative decision made by FmHA or its successor agency under Public Law 103-354 under this subpart may appeal that decision under the provisions of subpart B of part 1900 of this chapter.

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

(a) *General guidelines.* The following actions have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They will not be subject to environmental assessments or impact statements. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from either the policy considerations contained in §§1940.303 through 1940.305 of this subpart or from compliance with other applicable local, State, or Federal environmental laws. Also, the actions preceded by an asterisk (*) are not excluded from further review depending upon whether in some cases they would be located within, or in other cases, potentially affect:

- (1) A floodplain,
- (2) A wetland,
- (3) Important farmlands, or prime forestlands or rangelands,
- (4) A listed species or critical habitat for an endangered species,
- (5) A property that is listed on or may be eligible for listing on the National Register of Historic Places,
- (6) An area within an approved State coastal zone management program,

(7) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System,

(8) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System,

(9) A sole source aquifer recharge area, or

(10) A State water quality standard (including designated and/or existing beneficial uses and antidegradation requirements).

(i) Whether location within one of the preceding resource areas is sufficient to require a further review or a potential impact to one of them must also be identified to require a review is determined by FmHA or its successor agency under Public Law 103-354's completion of Form FmHA or its successor agency under Public Law 103-354 1940-22 in accordance with the FMI and §1940.317 of this subpart.

(ii) When the categorical exclusion classification is lost, as specified in §1940.317 of this subpart, the action must be reviewed under the requirements of paragraph (g) of that section. This requirement serves to implement §1508.4 of the CEQ regulations which requires Federal agencies to detect extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(iii) Further guidance on the use of these exclusions is contained in §1940.317 of this subpart.

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

(2) The approval of an individual building lot that is located on a scattered site and either not part of a subdivision or within a subdivision not requiring FmHA or its successor agency under Public Law 103-354's approval;

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

(4) Self-Help Technical Assistance Grants;

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

§ 1940.310

7 CFR Ch. XVIII (1-1-09 Edition)

(6) Technical Supervisory Assistance Loans and Grants;

(7) Weatherization of any existing housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within the Coastal Barrier Resources System or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in §1940.317(g) of this subpart;

(8) The financing of housing construction or the approval of lots in a previously approved FmHA or its successor agency under Public Law 103-354 subdivision provided that

(i) The action is consistent with all previously adopted stipulations for the multi-family housing project or subdivision, and

(ii) The FmHA or its successor agency under Public Law 103-354 environmental impact review that was previously completed for the original application is still current with respect to applicable environmental requirements and conditions present at the site, and it assessed the lots or expansion for which approval is being requested;

(9) The purchase of any existing, non-FmHA or its successor agency under Public Law 103-354 owned housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within a 100-year floodplain, the Coastal Barrier Resources System, or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in §1940.317(g) of this subpart; and

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

(c) *Community and business programs and nonprofit national corporations loan and grant program.* *(1) Financial assistance directed to existing businesses, facilities, and/or structures that does not involve new construction or large increases in employment; does not involve a facility that presently or previously produced or stored hazardous waste or disposed of hazardous waste on the facility's property; and does not result in the increased production of gaseous, liquid, or solid wastes, or a

change in the type or content of such wastes as long as waste production, handling, treatment and disposal practices presently comply with applicable Federal, State and local regulations and there is no history of violations. If any of these waste production, handling, treatment, disposal or compliance criteria cannot be met, a Class I assessment must be initiated to include a narrative discussion of the types and quantities of wastes produced and the adequacy of the treatment, storage, and disposal practices, if the involved wastes meet the criteria for a Class I assessment contained in §1940.311(b)(3)(iii) of this subpart. If not, a Class II assessment must be completed.

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

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

(4) Financial assistance for a technical assistance grant under the nonprofit national corporation loan and grant program;

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

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

(d) *Farm programs.* (1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no shifts in land use are proposed beyond the limits stated in paragraphs (d) (10) and (11) of this section;

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

RHS, RBS, RUS, FSA, USDA**§ 1940.310**

stated in paragraphs (d) (10) and (11) of this section;

(3) Financial assistance for:

(i) The payment of annual operating expenses, which does not cover activities specifically addressed in this section or §1940.311 or §1940.312 of this subpart;

(ii) Family living expenses, and

(iii) Refinancing debts;

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

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

(6) Financial assistance for the installation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres, provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in §1940.312 of this subpart. Potential effects to a water quality standard, an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in §1940.317(g) of this subpart.

(7) Financial assistance that solely involves the replacement or restoration of irrigation facilities, to include those facilities described in paragraph (d)(6) of this section, with minimal change in use, size, capacity, or location from the original facility(s) provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in §1940.312 of this subpart. Potential effects to a water

quality standard, an historic property, or the Wild and Scenic Rivers System require that a Class I assessment be completed as specified in §1940.317(g) of this subpart. Also, to qualify for this exclusion, the facilities to be replaced or restored must have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons. Otherwise, the action will be viewed as an installation of irrigation facilities.

(8) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in §1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in §1940.317(g) of this subpart;

* (9) Financial assistance for the conversion of:

(i) Land in agricultural production to pastures or forests, or

(ii) Pastures to forests;

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

(11) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no State water quality standard or wetlands are affected. If a wetland is affected, the application will fall under Class II as defined in §1940.312 of this subpart. If a water quality standard would be impaired or antidegradation requirement

§ 1940.311

7 CFR Ch. XVIII (1–1–09 Edition)

not met, a Class I assessment is required as specified in §1940.317(g) of this subpart.

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

(2) For actions other than those covered by exhibit M of this subpart, loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to approved projects, including the provision of additional financial assistance that do not alter the purpose, operation, location, or design of the project as originally approved;

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

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

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

* (6) The lease or disposal of real property by FmHA or its successor agency under Public Law 103-354 whenever the transaction is either not controversial for environmental reasons or will not result in a change in use of the real property within the reasonably foreseeable future.

§ 1940.311 Environmental assessments for Class I actions.

The Agency's proposals and projects that are not identified in §1940.310 of this subpart as categorical exclusions require the preparation of an environmental assessment in order to determine if the proposal will have a significant impact on the environment. For purposes of implementing NEPA, the actions listed in this section are presumed to be major Federal actions. If an action has a potential to create a significant environmental impact, an EIS must be prepared. (In situations

when there is clearly a potential for a significant impact, the EIS may be initiated directly without the preparation of an assessment.) It is recognized that many of the applications funded annually by FmHA or its successor agency under Public Law 103-354 involve small-scale projects having limited environmental impacts. However, because on occasion they have the potential to create a significant impact, each must be assessed to determine the degree of impact. The scope and level of detail of an assessment for a small-scale action, though, need only be sufficient to determine whether the potential impacts are substantial and further analysis is necessary. Therefore, for the purpose of implementing NEPA, FmHA or its successor agency under Public Law 103-354 has classified its smaller scale approval actions as Class I actions. The format which will be used for accomplishing the environmental assessment of a Class I action is provided in Form FmHA or its successor agency under Public Law 103-354 1940-21. An important aspect of this classification method is that it allows FmHA or its successor agency under Public Law 103-354's environmental review staff to concentrate most of its time and efforts on those actions having the potential for more serious or complex environmental impacts. Additional guidance on the application of NEPA to Class I actions is provided in §1940.319 of this subpart.

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA or its successor agency under Public Law 103-354 housing project, see §1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion. In the case of an expansion for which an environmental assessment was not done for the original FmHA or its successor agency under Public Law 103-354 project, the size of the proposal for assessment purposes is determined by adding the number of units in the original project(s) to those presently being requested.

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

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

(3) Financial assistance for a housing preservation grant.

(b) *Community and business programs and nonprofit national corporations loan and grant program.* Class I assessments will be prepared for the following categories:

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

(i) There will not be a substantial increase in the volume of discharge or the loading of pollutants from any existing or expanded sewage treatment facilities, or a substantial increase in an existing withdrawal from surface or ground waters. A substantial increase may be evidenced by an increase in hydraulic capacity or the need to obtain a new or amended discharge or withdrawal permit.

(ii) There will not be either a new discharge to surface or ground waters or a new withdrawal from surface or ground waters such that the design capacity of the discharge or withdrawal facility exceeds 50,000 gallons per day and provided that the potential water quality impacts are documented in a manner required for a Class II assessment and attached as an exhibit to the Class I assessment.

(iii) From the boundaries listed below, there is no extension, enlargement or construction of interceptors, collection, transmission or distribution lines beyond a one-mile limit estimated from the closest point of the boundary most applicable to the proposed service area:

(A) The boundary formed by the corporate limits of the community being served.

(B) If there are developed areas immediately contiguous to the corporate limits of a community, the boundary formed by the limits of these developed areas.

(C) If an unincorporated area is to be served, the boundary formed by the limits of the developed areas.

(iv) The proposal is designed for predominantly residential use with other

new or expanded users being small-scale commercial enterprises having limited secondary impacts.

(v) For a proposed expansion of sewage treatment or water supply facilities, such expansions would serve a population that is no more than 20 percent greater than the existing population.

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

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

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

(i) Are confined to single, small sites; and

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

(iii) Do not produce either substantial amounts of liquid or solid wastes or any of the following type(s) of wastes:

(A) Gaseous, liquid, or solid waste that is hazardous toxic, radioactive, or odorous;

(B) Either a liquid waste, whether or not disposed of on-site, that cannot be accepted by a publicly owned treatment works without first receiving pretreatment, or a liquid waste discharge that is a point source subject to a Federal, or State discharge permit; or

(C) Gaseous waste or air pollutant that will be emitted either from a new source at a rate greater than one hundred tons per year or from an expanded source at a rate greater than twenty-five tons per year.

(4) Financial assistance for a live-stock-holding facility or feed-lot meeting the criteria of § 1940.311(c)(8) of this subpart.

§ 1940.311

(c) *Farm Programs.* In completing environmental assessments for the following Class I actions and the Class II actions listed in §1940.312(d), special attention will be given to avoiding a duplication of effort with other Department agencies, particularly SCS. For applications in which the applicant is receiving assistance from other agencies, technical assistance from SCS, for example, FmHA or its successor agency under Public Law 103-354 will request from that agency a copy of any applicable environmental review conducted by it and will adopt that review if the requirements of §1940.324 of this subpart are met. FmHA or its successor agency under Public Law 103-354 will work closely with the other Federal Agencies to supplement previous or on-going reviews whenever they cannot be readily adopted.

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

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

(3) Financial assistance for land-clearing operations encompassing over 15 acres, but no more than 35 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in §1940.312 of this subpart;

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

(5) Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case

7 CFR Ch. XVIII (1-1-09 Edition)

the application will fall under Class II as defined in §1940.312 of this subpart;

(6) Financial assistance to grazing associations;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in §1940.312 of this subpart; and

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

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

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities, and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location or design of the project as originally approved;

(3) The lease or disposal of real property by FmHA or its successor agency under Public Law 103-354 which meets either the following criteria:

(i) The lease or disposal may result in a change in use of the real property in the reasonably foreseeable future, and such change is equivalent in magnitude or type to either the Class I actions defined in this section or the categorical exclusions defined in §1940.310 of this subpart; or

(ii) The lease or disposal is controversial for environmental reasons, and the real property is equivalent in size or type to either the Class I actions defined in this section or the categorical exclusions defined in §1940.310 of this subpart.

§ 1940.312 Environmental assessments for Class II actions.

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

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA or its successor agency under Public Law 103-354 housing project, see § 1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion, otherwise it is a Class II action.

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

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

(b) *Community and business programs and nonprofit national corporations loan and grant program.* (1) Class II actions are those which either do not meet the criteria for a categorical exclusion as stated in § 1940.311 of this subpart, or involve a livestock-holding facility or feedlot meeting the criteria for a Class II action as defined in paragraphs (c) (9) and (10) of this section; and

(2) Non-technical assistance grant or loan guarantee under nonprofit national corporation loan and grant program.

(c) *Farm programs.* In completing environmental assessments for the following actions, FmHA or its successor agency under Public Law 103-354 will first determine if the applicant has sought technical assistance from the Soil Conservation Service (SCS). If not, the applicant will be requested to do so. Subsequently, an approved loan will

be structured so as to be consistent with any conservation plan developed with the application by SCS. However, the FmHA or its successor agency under Public Law 103-354 approving official need not include an element of the conservation plan within the loan agreement if that official determines that the element is both nonessential to the accomplishment of the plan's objectives and so costly as to prevent the borrower from being able to repay the loan. The SCS environmental review will be adopted by FmHA or its successor agency under Public Law 103-354 if the requirements of § 1940.324 of this subpart are met.

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

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

(3) Financial assistance for land-clearing operations either encompassing more than 35 acres or affecting a wetland, if less than 35 acres is involved;

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

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

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

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises either utilizing more than 10 acres or affecting a wetland, if less than 10 acres is involved.

(8) Financial assistance for alteration of a wetland;

§ 1940.313

(9) Financial assistance for a livestock-holding facility or feedlot located in a sparsely populated farming area having a capacity as large or larger than one of the following capacities; 1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,000 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine, and sheep; (The term *animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0) and

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

(d) *General.* (1) Any action which meets the numerical criteria or other restriction for a Class I action contained in §1940.311 of this subpart, but is controversial for environmental reasons. If the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such a complaint or questions can be handled under the assessment format for a Class I action, Form FmHA or its successor agency under Public Law 103-354 1940-21, as explained in §1940.319 of this subpart. When several potential impacts are questioned, however, the assessment format (exhibit H of this subpart) for a Class II action must be used to address these questions;

7 CFR Ch. XVIII (1-1-09 Edition)

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location, or design of the project as originally approved;

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

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

(5) The issuance of regulations and instructions, as well as amendments to these, that described either the entities, proposals and activities eligible for FmHA or its successor agency under Public Law 103-354 financial assistance, or the manner in which such proposals and activities must be located, constructed, or implemented; and

(6) The lease or disposal of any real property by FmHA or its successor agency under Public Law 103-354 which either does not meet the criteria for a categorical exclusion as stated in §1940.310(e)(6) of this subpart or a Class I action as stated in §1940.311(d)(3) of this subpart.

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

The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA or its successor agency under Public Law 103-354, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) EISs will be done for those Class I and Class II actions that are determined to have a significant impact on the quality of the human environment.

The criteria for determining significant impacts are contained in §1508.27 of the CEQ regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA or its successor agency under Public Law 103-354 actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA or its successor agency under Public Law 103-354 actions that on an individual basis may have relatively few environmental impacts but create a potential for significantly impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multi-family housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA or its successor agency under Public Law 103-354's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s), (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts. FmHA or its successor agency under Public Law 103-354 will consult with HUD for determining a significant impact whenever the total of HUD and FmHA or its successor agency under Public Law 103-354 housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations. (See 24 CFR part 50.)

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

(1) The public health and safety are identifiably affected, that is, whenever the proposed action may affect any standards promulgated under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*) or similar State authorities.

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

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

§ 1940.315 Timing of the environmental review process.

(a) The FmHA or its successor agency under Public Law 103-354 office to which a potential applicant would go to seek program information and request application materials will notify the applicant of the major environmental requirements applicable to the type of assistance being sought. Emphasis should be placed on describing FmHA or its successor agency under Public Law 103-354's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process.

(b) When a preapplication is either filed by the applicant or required by FmHA or its successor agency under Public Law 103-354 for a project not categorically excluded, the prospective applicant will be requested to complete Form FmHA or its successor agency under Public Law 103-354 1940-20 at the time of the issuance of Form AD-622,

§ 1940.316

“Notice of Preapplication Review Action,” or other notice inviting an application. Form AD-622 will clearly inform the applicant that during the period of application review, the applicant is to take no actions or incur any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment, and that satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions for Community Programs and prior to loan approval for all other programs where a preapplication is used. FmHA or its successor agency under Public Law 103-354 must make its environmental reviews simultaneously with other loan processing actions so that they are an integral part of the loan process. Whenever the potential for a major adverse environmental impact is recognized, such as issues pertaining to floodplains, wetlands, endangered species, or the need for an EIS, priority consideration will be given to resolving this issue by appropriate FmHA or its successor agency under Public Law 103-354 staff. Loan processing need not cease during this resolution period, but loan processing actions will not be taken that might limit alternatives to be considered or whose outcome may be affected by the environmental review. The environmental impact review (whether a categorical exclusion, environmental assessment or EIS) must be completed prior to the issuance of the letter of conditions for Community Programs, prior to issuance of a conditional commitment for the Business and Industry and Farmer Program Guaranteed Loan Programs, and either prior to loan approval or obligation of funds, whichever occurs first, for all other programs where a preapplication is used. As an exception, however, whenever an application must be submitted to the National Office for concurrence or approval, the environmental review must be completed prior to and included in the submission to the National Office. The environmental impact review is not completed by FmHA or its successor agency under Public Law 103-354 until all applicable public notices and associated review periods have been

7 CFR Ch. XVIII (1-1-09 Edition)

completed and FmHA or its successor agency under Public Law 103-354 has taken any necessary action(s) to address comments received. The exception to the provisions of this paragraph is contained in §1940.332 of this subpart.

(c) When a preapplication is not filed, the prospective applicant will be required to complete Form FmHA or its successor agency under Public Law 103-354 1940-20 at the earliest possible time after FmHA or its successor agency under Public Law 103-354 is contacted for assistance but no later than when the application is filed with the appropriate FmHA or its successor agency under Public Law 103-354 office. (For the exception to this statement as regards Farm Programs' Class I actions, see §1940.309(c) of this subpart.) FmHA or its successor agency under Public Law 103-354 will not consider the application to be complete, until FmHA or its successor agency under Public Law 103-354 staff have completed the environmental impact review, whether an assessment or EIS.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA or its successor agency under Public Law 103-354 1940-22 will be completed by FmHA or its successor agency under Public Law 103-354 as early as possible after receipt of the application. The application will not be considered complete until either the checklist is successfully completed or the need for any further environmental review is identified and completed.

§ 1940.316 Responsible officials for the environmental review process.

(a) *Approving official.* With the exception of paragraph (b)(2) of this section, the FmHA or its successor agency under Public Law 103-354 official responsible for executing the environmental impact determination and environmental findings for a Class I or Class II action will be the official having approval authority for the action as specified in subpart A of part 1901 of this chapter (available in any the Agency or its successor agency under Public Law 103-354 office).

(b) *State Office level.* (1) When the approval official is at the State Office level, the responsible Program Chief

will have the responsibility for preparing the appropriate environmental review document. Whenever the Chief delegates this responsibility in accordance with §1940.302(i) of this subpart, the Chief is responsible for reviewing the environmental document to ensure that it is adequate, that any deficiencies are corrected, and that it is signed by the preparer. When the document is satisfactory to the Chief, the Chief will sign it as the concurring official. When no delegation occurs, the Chief will sign as the preparer. If the environmental review document is either a Class I or Class II assessment, it must be provided to the SEC for review prior to being submitted to the approval official for final determinations. The SEC will review the assessment and provide recommendations to the approval official.

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

(c) *District or County Office level.* The approval official for the action under review will be responsible for preparing the appropriate environmental review document and completing the environmental findings and impact determinations for Class I and Class II assessments, except in the circumstances outlined in paragraph (d) of this section. Whenever the approval official delegates the preparation of the environmental review in accordance with §1940.302(i) of this subpart, the ap-

proval official must, after exercising the same responsibilities assigned to the Program Chief as indicated in paragraph (b)(1) of this section, sign the environmental review document as the concurring official. Both District Directors and County Supervisors will contact, as needed, the SEC for technical assistance in preparing specific environmental review documents.

(d) *Multi-level review.* When the approval official is at the County Office or District Office level but the action must be forwarded to the State Office for concurrence, the responsible Program Chief will perform the responsibilities of the concurring official with respect to the environmental review document and the SEC will review it, if a Class I or Class II assessment, in a similar manner as indicated in paragraph (b) of this section. Responsibilities similar to those of the Program Chief will exist for the District Director when the County Supervisor forwards an action to the District Office for concurrence.

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

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions exempts properly defined actions or proposals from the review requirements of NEPA. It does not exempt proposals from the requirements of other environmental laws, regulations or Executive orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Extraordinary circumstances may cause an application to lose its categorical exclusion and require a Class I environmental assessment, as further specified in paragraph (e) of this section. Section 1508.4 of

§ 1940.317

CEQ's regulations state that "any procedures under this section will provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (see §1940.310(b)(5) of this subpart) but is not exempt from the requirements of Executive Order 11990, "Protection of Wetlands." In the processing of this application, FmHA or its successor agency under Public Law 103-354 must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filling of 2 acres of wetland, such a potential wetland impact, under the requirements of §1940.310(a) of this subpart, represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA or its successor agency under Public Law 103-354's compliance with the Executive order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See §1940.314 of this subpart.)

(b) The approving official for an action will be responsible for ensuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfill this responsibility, Form FmHA or its successor agency under Public Law 103-354 1940-22 will be completed for those actions that would normally be categorically excluded and as further defined in paragraph (c) of this section. When Form FmHA or its successor agency under Public Law 103-354 1940-22 must be prepared and the approving official delegates its preparation in accordance with §1940.302(i) of this subpart, the approving official must sign the form as the concurring official. If

7 CFR Ch. XVIII (1-1-09 Edition)

that approving official must, prior to approval, forward the action to a District or State Office for review, a second concurrence must be executed by the Program Chief or District Director, as determined by the level of review being conducted. The checklist is filed with the application and serves as FmHA or its successor agency under Public Law 103-354's documentation of compliance with the environmental laws, regulations and Executive Orders listed on the checklist. Whenever the preparer is within the State Office or is in the National Office, the FmHA or its successor agency under Public Law 103-354 office where the processing of the application was initiated is responsible for providing sufficient site and project information in order to complete the checklist.

(c) Form FmHA or its successor agency under Public Law 103-354 1940-22 need not be completed for all categorical exclusions as defined in §1940.310 of this subpart but only for those listed below. This list identifies the exclusions by their subject heading and paragraph number within §1940.310 of this subpart. Additionally, for the housing assistance exclusion identified in §1940.310(b)(8), for farm programs exclusions listed in §1940.310(d)(2) and (3), and for community and business programs exclusions processed under §1940.310(e)(2) of this subpart, a notation must be made in the docket materials or running record for the action by the processing official that the specific criteria of the applicable exclusion have been met for the action under review.

(1) Housing assistance—(b), (1), (2), (3), (5), (7), and (9);

(2) Community and Business Programs—(c) (1) and (2);

(3) Farm Programs—(d) (1) through (11);

(4) General exclusions—(e)(2), if action covered by exhibit M of the subpart, and (6).

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

(1) If the application represents one of several phases of a larger proposal,

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

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA or its successor agency under Public Law 103-354. If an environmental assessment is required, it will address the environmental impacts of the entire project.

(e) Under any one of the following circumstances, an action that is normally categorically excluded loses its classification as an exclusion and must be reviewed in the manner described in paragraph (g) of this section. The following listing corresponds to the list of land uses and environmental resources contained in part 2 of Form FmHA or its successor agency under Public Law 103-354 1940-22.

(1) Wetlands—the proposed action:

(i) Would be located adjacent to a wetland or a wetland is within the project site, and

(ii) The action would affect the values and functions of the wetland by such means as converting, filling, draining, or directly discharging into it;

(2) Floodplains—the proposed action:

(i) Includes or involves an existing structure(s) located within a 100-year floodplain (500-year floodplain if critical action), or

(ii) Would be located within a 100-year floodplain (500-year floodplain if

critical action) and would affect the values and functions of the floodplain by such means as converting, dredging, or filling or clearing the natural vegetation;

(3) Wilderness (designated or proposed)—the proposed action:

(i) Would be located in a wilderness area, or

(ii) Would affect a wilderness area such as by being visible from the wilderness area;

(4) Wild or Scenic River (proposed or designated or identified in the Department of the Interior's nationwide Inventory)—the proposed action:

(i) Would be located within one-quarter mile of the banks of the river,

(ii) Involves withdrawing water from the river or discharging water to the river via a point source, or

(iii) Would be visible from the river;

(5) Historical and Archeological Sites (listed on the National Register of Historic Places or which may be eligible for listing)—the proposed action:

(i) Contains a historical or archeological site within the construction site, or

(ii) Would affect a historical or archeological site;

(6) Critical Habitat or Endangered/Threatened Species (listed or proposed)—the proposed action:

(i) Contain a critical habitat within the project site,

(ii) Is adjacent to a critical habitat, or

(iii) Would affect a critical habitat or endangered/threatened species;

(7) Coastal Barrier Included in Coastal Barrier Resources System—the proposed action would be located within the Coastal Barrier Resources System;

(8) Natural Landmark (listed on National Registry of Natural Landmarks)—the proposed action either:

(i) Contains a natural landmark within the project site, or

(ii) Would affect a natural landmark;

(9) Important Farmlands—the proposed action would convert important farmland to a nonagricultural use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

§ 1940.318

(10) Prime Forest Lands—the proposed action would convert prime forest land to another use(s), except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(11) Prime Rangelands—the proposed action would convert prime rangeland to another use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(12) Approved Coastal Zone Management Area—the proposed action would be located within such area and no agreement exists with the responsible State agency obviating the need for a consistency determination for the type of action under consideration;

(13) Sole Source Aquifer Recharge Area—the proposed action would be located within such area and no agreement exists with the Environmental Protection Agency (EPA) obviating the need for EPA's review of the type of action under consideration; and

(14) State Water Quality Standard—the proposed action would impair a water quality standard, including designated and/or existing beneficial uses, or would not meet applicable antidegradation requirements for point or nonpoint sources.

(f) From the above paragraph (e), it should be noted that the location within the project site of any of the land uses and environmental resources identified in paragraphs (e) (1), (2), (9), (10), (11), (12), and (13) of this section is not sufficient for an action to lose its categorical exclusion. Rather, the land use or resource must be affected in the case of paragraphs (e) (1), (2), (9), (10), and (11) of this section. For paragraphs (e) (12), (13) and (14) of this section, further review and consultation can be avoided by written agreement with the responsible agency detailing the types of actions not requiring interagency review.

(g) Whenever a categorical exclusion loses its status as an exclusion for any of the reasons stated in paragraph (e) of this section, the environmental impacts of the action must be reviewed through the preparation of a Class I assessment, Form FmHA or its successor agency under Public Law 103-354 1940-21. Not all of the procedural requirements for a Class I assessment apply in

7 CFR Ch. XVIII (1-1-09 Edition)

this limited case, however. The following exemptions exists:

(1) No public notice provisions of this subpart apply.

(2) The applicant does not complete Form FmHA or its successor agency under Public Law 103-354 1940-20.

(3) The action does not require a Class II assessment should more than one important land resources be affected.

§ 1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the preparer (as defined in §§ 1940.302(i) and 1940.316 of this subpart) is to examine Form FmHA or its successor agency under Public Law 103-354 1940-20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it will be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment will be initiated in the format and manner described in exhibit H of this subpart. In completing the assessment, appropriate experts from State and Federal agencies, universities, local and private groups will be contacted as necessary for their views. In so doing, the preparer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. Appropriate experts must be contacted whenever required by a specific provision of this subpart or whenever the preparer does not have sufficient data or expertise available within FmHA or its successor agency under Public Law 103-354 to adequately assess the degree of a potential impact or the need for avoidance or mitigation. Comments from an expert must be obtained in writing whenever required by a specific provision of this subpart or the potential environmental impact is either controversial, complex, major, or apparently major. When correspondence is exchanged, it will be appended to the assessment. Oral discussions should be documented in the manner indicated in exhibit H of this subpart. On the other hand, there is no

need for the preparer to seek expert views outside of the Agency when there is no specific requirement to do so and the preparer has sufficient expertise available within FmHA or its successor agency under Public Law 103-354 to assess the degree of the potential impact and the need for avoidance or mitigation.

(c) At the earliest possible stage in the assessment process, the preparer will identify the Federal, State, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA or its successor agency under Public Law 103-354 staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the preparer will consult with the involved agencies to determine the nature, timing and results of their environmental analysis. These consultations will be documented in the assessment and considered or adopted when making the environmental impact determination. (See §1940.324 of this subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the preparer will further contact the involved Federal agencies and attempt to determine the lead Federal Agency as discussed in §§1940.320(b) and 1940.326 of this subpart.

(d) Consultations similar to those discussed in paragraph (c) of this section will also be undertaken with those Federal and State agencies which are directly involved in the FmHA or its successor agency under Public Law 103-354 action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the preparer has either reviewed the other Agency's completed environmental analysis or consulted with the other Agency and is reasonably sure of the scope, content, and expected environmental impact determination of the forthcoming analysis and has so documented for the FmHA or its successor agency under Public

Law 103-354 assessment this understanding. If the other Agency believes that the project will have a significant impact, a joint or lead impact statement will be prepared. If the other Agency does not believe a significant impact will occur, the preparer will consider this finding and its supporting analysis in completing the FmHA or its successor agency under Public Law 103-354 environmental impact determination. Guidance in adopting an environmental assessment prepared by another Federal Agency is provided in §1940.324 of this subpart.

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

(f) Throughout this assessment process, the preparer will keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the preparer will so notify the approving official. Those actions specified in §1940.320 of this subpart will then be initiated, unless the approving official disagrees with the preparer's recommended determination, in which case further review of the determination may be required as explained in

§ 1940.318

§ 1940.316 (b), (d) and (e) of this subpart. As soon as possible after the need for an EIS is determined, the applicant will also be advised of this in writing, as well as reformed of the limitations on its actions during the period that the EIS is being completed. (See § 1940.309(e) of this subpart.) The applicant's failure to comply with these limitations will be considered as grounds for postponement of further consideration of the application until such problem is alleviated.

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

(h) As part of the assessment process, the preparer will initiate the consultation and compliance requirements for

7 CFR Ch. XVIII (1-1-09 Edition)

the environmental laws, regulations, and Executive orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in Item 10b of Form FmHA or its successor agency under Public Law 103-354 1940-21 for a Class I action and Item XXIIb of exhibit H of this subpart for a Class II action will result in postponement of further consideration of the application until such problem is alleviated.

(i) When the preparer has completed the assessment, the related materials and correspondence utilized will be attached. The preparer will then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or will recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 10a of Form FmHA or its successor agency under Public Law 103-354 1940-21 for Class I action and item XXIIa of exhibit H of this subpart for a Class II action.) The recommended environmental findings will also be completed. (Item 10b of Form FmHA or its successor agency under Public Law 103-354 1940-21 for a Class I action and Item XXIIb of exhibit H of this subpart for a Class II action.) In those instances specified in § 1940.316, the assessment will then be forwarded to the concurring official and, as required, to the SEC for review. The concurring official will coordinate, as necessary, with the preparer any questions, concerns or clarifications and complete and document the review prior to the assessment being submitted to the approving official or the SEC. The SEC will coordinate with the concurring official in a similar fashion whenever the latter's review is required.

(j) The approving official will review the environmental file and recommendations. The official will then execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requirements, the format contained in exhibit I of this

subpart will be used. If a significant impact is determined, the steps specified in §1940.320 of this subpart will be initiated for the preparation of the EIS. If a determination is made that the proposed action does not comply with the environmental requirements that are explained in this subpart and listed in Item 10b of Form FmHA or its successor agency under Public Law 103-354 1940-21 for a Class I action or Item XXIB of exhibit H of this subpart for a Class II action and there are no feasible alternatives (practicable alternatives when required by specific provisions of this subpart), modifications, or mitigation measures which could comply, the action will be denied or disapproved. If the approving official's determination or findings differ from the recommendations of the preparer, concurring official or the SEC, this difference will be addressed in the manner specified in §1940.316 of this subpart.

(k) When there is no need for further review as discussed in paragraph (j) of this section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. To conclude the assessment, the applicant will then be requested to provide public notification of these results as indicated in §1940.331(b)(3) of this subpart. The approving official will not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they will be included in the environmental assessment and considered. Any necessary changes resulting from this consideration will be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determination steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determinations, the approving official may continue to process the application. The environmental documents, *i.e.*, the assessment, related correspondence, Form FmHA or its successor agency under Public Law 103-354 1940-20, and the finding of no significant impact will be included

with the approval documents which are assembled for review and clearance within the approving office.

(l) Whenever changes are made to an action or comments or new or changed information relating to the action's potential environmental effects is received after the assessment is completed but prior to the action's approval, such change, comment, or information will be evaluated by the approving official to determine the impact on the completed assessment. Whenever the contents or findings of that assessment are affected, the assessment process for that action will be revised and any other related requirement of this subpart met. Changes to an action in terms of its location(s), design, purpose, or operation will normally require, at a minimum, modification of the original assessment to reflect such change(s) and the associated environmental impacts.

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

§ 1940.319 Completing environmental assessments for Class I actions.

(a) As stated in this subpart, a main purpose of Form FmHA or its successor agency under Public Law 103-354 1940-21, is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding of no significant impact, as well as compliance determinations for other applicable environmental laws, regulations and policies. The second major purpose is to serve as a screening tool for identifying those Class I actions which have more than minimal

§ 1940.319

impacts and which, therefore, require a more detailed environmental review.

(b) The approach to reviewing a Class I action under the assessment format of Form FmHA or its successor agency under Public Law 103-354 1940-21 is exactly the same as for a Class II action. The preparer (as defined in §§ 1940.302(i) and 1940.316 of this subpart) must become familiar with the elements of the action, the nature of the environment to be affected, the relationship to any other Federal actions or related non-federal actions, and the applicable environmental laws and regulations.

(c) The data submission requirements placed on the applicant for a Class I action are not as extensive as for a Class II action. The requirements are limited to completing the face of Form FmHA or its successor agency under Public Law 103-354 1940-20, as well as categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI, whenever a previously completed environmental analysis covering these categories is not available. Should it later be determined that the magnitude of the Class I action's impact warrants a more detailed assessment, the applicant will be required to submit the remaining items of the data request. Additionally, the circumstances under which FmHA or its successor agency under Public Law 103-354 does not require the submission of Form FmHA or its successor agency under Public Law 103-354 1940-20 by an applicant whose proposed action requires a Class I assessment are specified in § 1940.317(f) of this subpart.

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

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination re-

7 CFR Ch. XVIII (1-1-09 Edition)

quirement. Such resources are listed in the assessment format, Form FmHA or its successor agency under Public Law 103-354 1940-21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the preparer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved will be attached. However, if more than one listed resource is to be affected, this will be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action will be initiated except if the action under review is an application for a Housing Preservation Grant.

(f) Similarly in completing item 3, General Impacts of Form FmHA or its successor agency under Public Law 103-354 1940-21, the assessment format for a Class II action must be initiated if more than one category of impacts cannot be checked as minimal. If there is a single category which needs analysis, this can be accomplished by attaching an appropriate exhibit addressing the questions and issues for that impact, as specified in the environmental assessment format for a Class II action. See § 1940.311(b)(1) of this subpart for when an attached discussion of water quality impacts is mandatory.

(g) The comments of State, regional, and local agencies obtained through applicable permit reviews or the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs, will be incorporated into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature will warrant the initiation of a more detailed assessment under the format for a Class II action (exhibit H of this subpart). Also, the issue of controversy must be addressed, and if the action is controversial for environmental reasons, the environmental assessment format for a Class II action (exhibit H of this subpart) will be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that focus

on a single impact, air quality, for example, the analysis of such complaints or questions can be handled under the assessment format for a Class I action. This analysis will then be provided by the approving official to the party or parties which raised the matter with FmHA or its successor agency under Public Law 103-354. When several potential impacts are questioned, however, the more detailed assessment format will be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA or its successor agency under Public Law 103-354 actions recently approved in the area or planned, will be analyzed. If the cumulative impact is not minimal and, for example, cumulatively exceeds the criteria and thresholds discussed in paragraphs (e), (f) and (g) of this section, the environmental assessment format for a Class II action will be completed. The actions of other Federal agencies and related nonfederal actions must also be assessed on this basis. When there is a Federal action involved, the environmental review conducted by that Agency will be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the preparer as the FmHA or its successor agency under Public Law 103-354 assessment, assuming the impacts are not significant. (See §1940.324 of this subpart.) If the other Agency is doing or planning an EIS, the preparer will inform that Agency of our action and request to be a cooperating agency.

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

(j) Exhibit I will be completed by the approval official in the same instances for a Class I assessment as for a Class II assessment. However, public notifi-

cation of FmHA or its successor agency under Public Law 103-354's finding of no significant environmental impact will not be required for a Class I assessment. Also, special provisions for completing a Class I assessment for an action that is normally categorically excluded but loses its classification as an exclusion are contained in §1940.317(g) of this subpart. With the exception of the two preceding sentences, all other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, apply to a Class I assessment.

§ 1940.320 Preparing EISs.

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

(b) *Organizing the EIS process.* Prior to initiating the scoping process outlined below, the preparer of the EIS will take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the below-listed parties need to be identified in advance; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead agency than

§ 1940.320

7 CFR Ch. XVIII (1–1–09 Edition)

FmHA or its successor agency under Public Law 103–354 (using the criteria contained in §1501.5(c) of the CEQ regulations), consultations should be initiated with that agency to determine the lead agency. If difficulties arise in completing this determination, the National Office will be consulted for assistance. All of the parties identified below will be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as discussed in paragraph (c) of this section.

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

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

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

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

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

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

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

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

(1) The first step in this process will be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the preparer, indicating that this person can answer questions about the proposed action and the EIS; list any cooperating agencies, and include the date and time of the scoping meeting.

If the latter information is not known at the time the notice of intent is prepared, it will be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It will be the responsibility of the preparer of the EIS to inform the National Office of the need to publish a notice of intent which will coordinate the publication of the notice in the FEDERAL REGISTER. For requirements relating to the timing the publication of the notice of intent within the project area, as well as the applicant’s responsibilities for the notice, see §1940.331(b) of this subpart.

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

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

(ii) Determine the scope and the significant issues to be analyzed in depth in the EIS;

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

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

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

(vi) Identify other environmental review and consultation requirements so

the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

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

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

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

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

(f) *Circulation of the EIS.* FmHA or its successor agency under Public Law 103-354 will circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the preparer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping

meeting. (See paragraph (b) of this section.) Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS will be provided to all parties that commented on the draft EIS.

(g) *Filing of the EIS.* The Deputy Administrator for Program Operations or any State Director that has been delegated the authority to prepare an EIS must file the EIS with EPA in accordance with § 1506.9 of the CEQ regulations. The official filing date for an EIS is the day that it is received by EPA's Office of Federal Activities. Filing of the EIS cannot occur until copies of the EIS have been transmitted to commenting agencies and made available to the public. Transmittal of the EIS must, therefore, occur either prior to its being filed with EPA (received by EPA) or no later than close of business of the same day that it is filed.

(h) *Public information meetings.* A public information meeting, as specified in § 1940.331(c)(1) of this subpart, will be held near the project site to discuss and receive comments on the draft EIS.

(i) *Response to comments.* The preparer of the EIS will respond to comments on the draft EIS as required by § 1503.4 of the CEQ regulations. The major and most frequently raised issues during the public information meeting will also be identified and addressed.

(j) *Timing of review.* The preparer of the EIS will be responsible for ensuring that the timing requirements for FmHA or its successor agency under Public Law 103-354 actions and the review periods for draft and final EISs are fully met (§ 1506.10 of CEQ regulations). Prescribed review periods are calculated from the date that EPA's Office of Federal activities publishes in the FEDERAL REGISTER a notice of availability for the EIS. Any request to reduce a prescribed review period will be made to EPA in accordance with § 1506.10(d) of the CEQ regulations.

§ 1940.321 Use of completed EIS.

(a) The final EIS will be a major factor in the Agency's final decision. Agency staff making recommendations on the action and the approving official

§ 1940.322

7 CFR Ch. XVIII (1-1-09 Edition)

will be familiar with the contents of the EIS and its conclusions and will consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft will accompany the proposal through the FmHA or its successor agency under Public Law 103-354 final clearance process. The alternatives considered by the approving official will be those addressed in the final EIS.

(b) As part of this review process, the preparer of the EIS will complete the recommendations listed in Item XXIIb and c of exhibit H of this subpart and provide them to the approving official prior to a final decision.

§ 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA or its successor agency under Public Law 103-354 and before any action is taken on the decision reached on the proposal, the approving official will prepare, in consultation with the preparer of the EIS, a concise record of the decision which will be available for public review. The record will:

- (a) State the decision reached;
- (b) Certify that the timing requirements for the EIS process have been fully met;
- (c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statutory mission and, if applicable, national policy) that were considered in the decision;
- (d) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why not; and
- (e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

§ 1940.323 Preparing supplements to EIS's.

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

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

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

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

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

(d) All of the requirements of this subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that there is a need for expedited or special procedures in the completion of a supplement, the approval of CEQ must first be obtained by the Administrator for any alternative procedures. The final supplement will be included in the project file or docket and used in the Agency's decision-making process in the same manner as a final EIS. (See § 1940.321 of this subpart and in particular subparagraphs (f), (g), and (j) of that section as well as § 1502.9(c)(4) of the CEQ regulations for associated circulation, filing, and timing requirements.)

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

(a) FmHA or its successor agency under Public Law 103-354 may adopt an EIS or portion thereof prepared by another Federal Agency after completion if:

(1) An independent review of the document is conducted by the preparer of the FmHA or its successor agency under Public Law 103-354 environmental review and it is concluded that

the document meets the requirements of this subpart; and

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA or its successor agency under Public Law 103-354 and the environmental conditions in the project area have not substantially changed since its publication, FmHA or its successor agency under Public Law 103-354 will recirculate the EIS as a "final" and so notify the public as specified in §1940.331(b) of this subpart. The final EIS will contain an appropriate explanation of the FmHA or its successor agency under Public Law 103-354 involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA or its successor agency under Public Law 103-354. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS will be updated to cover these differences and recirculated as a draft EIS with the public so notified. From that point, it will be reviewed and processed in the same manner as any other FmHA or its successor agency under Public Law 103-354 EIS. For circulation, filing, and timing requirements, see paragraphs (f), (g), and (j) of §1940.320 of this subpart as well as §§1506.3(c), 1506.9, and 1506.10 of the CEQ regulations.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under part 1504 of the CEQ regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA or its successor agency under Public Law 103-354 must so specify and provide an explanation in the recirculated EIS.

(c) After recirculation (whether as a draft or final), the EIS will be reviewed and processed in the same manner as any other FmHA or its successor agency under Public Law 103-354 EIS.

(d) FmHA or its successor agency under Public Law 103-354 may also adopt all or part of environmental assessments or environmental reviews prepared by other Federal agencies. In this case, only paragraph (a)(1) of this section applies. If the requirements of that paragraph can be met except for the fact that the Federal agency whose

assessment is to be adopted has no preliminary public notice requirements similar to FmHA or its successor agency under Public Law 103-354's (see §1940.331(b)(4) of this subpart), the assessment can be adopted without FmHA or its successor agency under Public Law 103-354 publishing a preliminary public notice. Additionally, when all of another Federal agency's assessment is adopted, without supplementation, for a Class II action and a finding of no significant environmental impact (exhibit I of this subpart) is reached by the proper FmHA or its successor agency under Public Law 103-354 official, no public notification of FmHA or its successor agency under Public Law 103-354's finding of no significant environmental impact is required if:

(1) The other Federal agency or its designee published a similar finding in a newspaper of general circulation in the vicinity of the proposed action;

(2) The other Federal agency's or its designee's public notice clearly described the action subject to the FmHA or its successor agency under Public Law 103-354 environmental review; and

(3) The other Federal agency's or its designee's public notice was published less than eighteen months from the date FmHA or its successor agency under Public Law 103-354 adopted the assessment.

§ 1940.325 FmHA or its successor agency under Public Law 103-354 as a cooperating Agency.

(a) FmHA or its successor agency under Public Law 103-354 will serve as a cooperating Agency when requested to do so by the lead Agency for an action in which FmHA or its successor agency under Public Law 103-354 is directly involved or for an action which is directly related to a proposed FmHA or its successor agency under Public Law 103-354 action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a community, as well as the community's water system plans pending before FmHA or its successor agency under Public Law 103-354. A memorandum of understanding or other written correspondence will be developed with the lead agency in order

§ 1940.326

to define FmHA or its successor agency under Public Law 103-354's role as the cooperating agency. The State Director will coordinate FmHA or its successor agency under Public Law 103-354's participation as a cooperating Agency for an action at the State Office level. The Administrator will have the same responsibility at the National Office level.

(b) When requested to be a cooperating Agency on a basis other than that discussed above, the State Director will consider the expertise which FmHA or its successor agency under Public Law 103-354 could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two bases not to participate as a cooperating Agency, a copy of the letter signed by the State Director or Administrator and so informing the lead Agency will be sent to CEQ.

(c) As a cooperating Agency, FmHA or its successor agency under Public Law 103-354 will participate in the development and implementation of the scoping process. If requested by the lead Agency, provide the lead Agency with staff support and descriptive materials with respect to the analyses of the FmHA or its successor agency under Public Law 103-354 portion of the action(s) to be covered, review and comment on all preliminary draft materials prior to their circulation for public review and comment, and attend and participate in public meetings called by the lead Agency concerning the EIS.

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

(e) FmHA or its successor agency under Public Law 103-354 will use the EIS as its own as long as FmHA or its successor agency under Public Law 103-354's comments and concerns are adequately addressed by the lead Agency and the final EIS is considered to meet the requirements of this subpart. It will be the responsibility of the preparer of the FmHA or its successor agency under Public Law 103-354 environmental review document to formally advise the approving official on these two points. The failure of the

7 CFR Ch. XVIII (1-1-09 Edition)

lead Agency's EIS to meet either of these stipulations will require FmHA or its successor agency under Public Law 103-354 to follow the steps outlined in § 1940.324 of this subpart prior to the approving official's decision on the FmHA or its successor agency under Public Law 103-354 action.

§ 1940.326 FmHA or its successor agency under Public Law 103-354 as a lead Agency.

(a) When other Federal agencies are involved in an FmHA or its successor agency under Public Law 103-354 action or related actions that require the preparation of an EIS, the preparer will consult with these agencies to determine a lead Agency for preparing the EIS. The criteria for making this determination will be those contained in § 1505.5 of the CEQ regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the National Office will be contacted. The assistance of CEQ will then be requested by the Administrator in order to conclude the determination of a lead Agency.

(b) When acting as lead Agency, the FmHA or its successor agency under Public Law 103-354 preparer will request other Federal and State agencies to serve as cooperating agencies on the basis of the guidance provided in § 1940.320(b) of this subpart. A memorandum of understanding or other written correspondence should be developed with a cooperating agency in order to define that agency's role in the preparation of the EIS.

§ 1940.327 Tiering.

To the extent possible, FmHA or its successor agency under Public Law 103-354 may consider the concept of tiering in the preparation of environmental assessments and EISs. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis

is from the program level to site-specific actions taken under that program or from an initial EIS to a supplement which discusses the issues requiring supplementation.

§ 1940.328 State Environmental Policy Acts.

(a) Numerous States have enacted environmental policy acts or regulations similar to NEPA, hereafter referred to as State NEPA's. It is important that FmHA or its successor agency under Public Law 103-354 staff have an understanding of which States have such requirements and how they apply to applicant's proposals. It will be the responsibility of each State Director to determine the applicable State requirements and to establish a working relationship with the State personnel responsible for their implementation.

(b) In processing projects located within States having State NEPA's, the preparer of the FmHA or its successor agency under Public Law 103-354 assessment will determine as early as possible in the assessment process whether the project falls under the requirements of the State NEPA. If it does, one of the following cases will exist and the appropriate actions specified will be taken.

(1) The applicant has complied with the State's NEPA, and it was determined under the State's requirements that the proposed project would not result in sufficient potential impacts to warrant the preparation of an impact statement or other detailed environmental report required by the State NEPA. This finding or conclusion by the State will be considered in the FmHA or its successor agency under Public Law 103-354's review, and any supporting information used by the State will be requested. However, the State's finding can never be the total basis for FmHA or its successor agency under Public Law 103-354's environmental impact determination. An independent and thorough review in accordance with the requirements of this subpart must be conducted by the preparer.

(2) The applicant has complied with the State NEPA, and it was determined under its implementing guidelines that a significant impact will result. This

fact will be given great weight in the Agency's environmental determination. However, the State's definition of significant environmental impact may encompass a much lower threshold of impacts compared to FmHA or its successor agency under Public Law 103-354's. In such a case, if the preparer does not believe that a significant impact will result under Agency guidelines for determining significant impacts, the environmental assessment will be prepared and include a detailed discussion with supporting information as to why the environmental reviewer's recommendation differs from that of the State's. However, the assessment cannot be completed until the State's impact statement requirements have been fulfilled by the applicant and the resulting impact statement has been reviewed by the preparer. An environmental impact determination will then be executed based upon the assessment and the statement.

(c) It should be emphasized that at no time does the completion of an impact statement under the requirements of a State NEPA obviate the requirement for FmHA or its successor agency under Public Law 103-354 to prepare an impact statement. Consequently, as soon as it is clear to the preparer that the Agency will have to prepare a statement, every attempt should be made to accomplish the statement simultaneously with the State's. Coordination with State personnel is necessary so that data and expertise can be shared. In this manner, duplication of effort and the review periods for the separate statements can be minimized. This process clearly requires a close working relationship with the appropriate State personnel.

§ 1940.329 Commenting on other Agencies' EIS's.

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

(b) Comments should concentrate on those matters of primary importance to FmHA or its successor agency under

§ 1940.330

Public Law 103-354 and on areas of Agency expertise, such as rural planning and development. Any potential conflicts with FmHA or its successor agency under Public Law 103-354 programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management guide and the objectives of the Department's land use regulation (exhibit A of this subpart). Copies of comments addressing land use questions will be provided to the appropriate chairman of the USDA State-level committee dealing with land use matters.

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

§ 1940.330 Monitoring.

(a) FmHA or its successor agency under Public Law 103-354 staff who normally have responsibility for the post-approval inspection and monitoring of approved projects will ensure that those measures which were identified in the preapproval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

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

(c) The preparer will directly monitor actions containing difficult or complex environmental special conditions.

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

(e) Whenever noncompliance with an environmental special condition is detected by FmHA or its successor agency under Public Law 103-354 staff, the

7 CFR Ch. XVIII (1-1-09 Edition)

preparer and the SEC will be immediately informed. The approving official will then take appropriate steps, in consultation with the responsible program office, the SEC and preparer, to bring the action into compliance.

§ 1940.331 Public involvement.

(a) *Objective.* The basic objective of FmHA or its successor agency under Public Law 103-354's public involvement process is threefold. It is to ensure that interested citizens can readily obtain knowledge of the environmental review status of FmHA or its successor agency under Public Law 103-354's funding applications, have the opportunity to input into this review process before decisions are made, and have access to the environmental documents supporting FmHA or its successor agency under Public Law 103-354 decisions.

(b) *Public notice requirements.* (1) For projects that undergo the preparation of an environmental impact statement, the first element of formal public participation in the EIS process involves the publication of the notice of intent to prepare an EIS. The content of the notice of intent and its publication by FmHA or its successor agency under Public Law 103-354 in the FEDERAL REGISTER are explained in § 1940.320 of this subpart. With respect to notification within the project area, the applicant will be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. The notice will be published in easily readable type in the nonlegal section of the newspaper(s). It will also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice will be sent by the applicant to the appropriate regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications

for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; affected property owners; and to any other parties that FmHA or its successor agency under Public Law 103-354 has identified to be so notified. It will also be posted at a readable location on the project site. The applicant will provide FmHA or its successor agency under Public Law 103-354 with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting will be accomplished at least 14 days prior to the date of the meeting.

(2) Coincident with the distribution of either a draft or final EIS, a notice of the statement's availability will be published within the project area in the same manner as a notice of intent to prepare an EIS. FmHA or its successor agency under Public Law 103-354 will request EPA to publish in the FEDERAL REGISTER a notice of the statement's availability in accordance with EPA's requirements and pursuant to §1506.10 of the CEQ regulations.

(3) For Class II actions that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice will be published in the same manner as a notice of intent to prepare an EIS but will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Individual copies will be sent to the same parties that are required to be sent a notice of intent, as specified in paragraph (b)(1) of this section, with the exception of local radio stations and other news media. Also, there is no requirement to post this notice on the project site. The applicant will provide FmHA or its successor agency under Public Law 103-354 with a copy of this notice, the dates the notice was published, and a list of all parties receiving an individual notice. This notification procedure does not apply to actions reviewed solely on the basis of a Class I assessment.

(4) The public notice procedures for actions that will affect floodplains, wetlands, important farmlands, prime rangelands or prime forest lands are contained in exhibit C of this subpart. These procedures apply to actions that require either an EIS, Class II assessment or Class I assessment. However, whenever an action normally classified as a categorical exclusion requires a Class I assessment because of the potential impact to one of these important land resources, no public notice procedures apply in the course of completing the Class I assessment. When applicable to an action, as specified in exhibit C of this subpart, these public notice procedures can apply at two distinct stages. The first stage, a preliminary notice, applies to any of the five important land resources. The second stage, a final notice, is followed by a fifteen-day public review period and applies only to actions that will impact floodplains or wetlands. For Class II actions, this final notice procedure must be combined with any applicable finding of no significant environmental impact, which is described in paragraph (b)(3) of this section. Individual copies of the preliminary and final notices will be sent to the same parties that are required to be sent a notice of finding of no significant impact, as specified in paragraph (b)(3) of this section, with the following exception. Whenever property owners affected by proposed mitigation measures, such as proposed hook-up restrictions on portions of water or sewer lines that will traverse floodplains, are advised of these proposed measures in a preliminary notice, these property owners need not be sent copies of the final notice as long as the mitigation measures in the final notice are unchanged from the preliminary notice and no property owners raised objections or concerns over the mitigation measures.

(5) The public notice requirements associated with holding a public information meeting are specified in paragraph (c) of this section.

(c) *Public information meetings.* (1) Public information meetings will be held for an action undergoing an EIS as specified in §1940.320 of this subpart. As part of the EIS process, a public information meeting will be held near the

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

(2) Whenever a public information meeting is held as part of the completion of an environmental assessment, it will be scheduled, announced, and held in generally the same manner as a public information meeting for an EIS. However, a minimum of 7 days advance notice of the meeting is sufficient, and a transcript of the meeting will not be required. Rather a summary of the meeting to include the major issues raised will be prepared by the FmHA or its successor agency under Public Law 103-354 official who chaired the meeting.

(d) *Distribution of environmental documents.* FmHA or its successor agency under Public Law 103-354 officials will promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impact statements, and records of decision. Interested parties can request these materials from the appropriate State Director or approval official for project activities and from the Administrator on other activities subject to environmental review.

§ 1940.332 Emergencies.

(a) *Action requiring EIS.* When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will consult with CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's regulations limit such arrangements to actions necessary to

control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this subpart, an emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety.

(b) *Action not requiring EIS.* When an emergency circumstance makes it necessary to take an action with apparent non-significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will be so notified. The Administrator reserves the authority to waive or amend all procedural aspects of this subpart relating to the preparation of environmental assessments including but not limited to the applicant's submission of Form FmHA or its successor agency under Public Law 103-354 1940-20, public notice requirements and/or their associated comment periods, the timing of the assessment process, and the content of environmental review documents. Alternative arrangements will be established on a case by case basis taking into account the nature of the emergency and the time reasonably available to respond to it. These alternative arrangements will, to the extent possible, attempt to achieve the substantive requirements of this subpart such as avoiding impacts to important land resources, when practicable, and minimizing potential adverse environmental impacts. In all cases, the environmental findings and determinations required for Class I and Class II assessments must be executed by the appropriate FmHA or its successor agency under Public Law 103-354 officials prior to approval of the action and be based upon the best information available under the circumstances and the prescribed alternative arrangements. (Refer to paragraph (a) of this section should the approval official for the action determine that an EIS is necessary.) Additionally, all applicable consultation and coordination procedures required by law or regulation will be initiated with the appropriate Federal or State agency(s). Such procedures will be accomplished in the most expeditious manner possible and modified to the extent necessary and mutually agreeable between FmHA or its

successor agency under Public Law 103-354 and the affected agency(s). The provisions of this paragraph are limited to the same emergency circumstances and scope of action as specified in paragraph (a) of this section.

§ 1940.333 Applicability to planning assistance.

The award of FmHA or its successor agency under Public Law 103-354 funds for the purpose of providing technical assistance or planning assistance will not be subject to any environmental review. However, applicants will be expected to consider in the development of their plans and to generally document within their plans:

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

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

§ 1940.334 Direct participation of State Agencies in the preparation of FmHA or its successor agency under Public Law 103-354 EISs.

FmHA or its successor agency under Public Law 103-354 may be assisted by a State Agency in the preparation of an EIS subject to the conditions indicated below. At no time, however, is FmHA or its successor agency under Public Law 103-354 relieved of its responsibilities for the scope, objectivity, and content of the entire statement of any other responsibility under NEPA.

(a) The FmHA or its successor agency under Public Law 103-354 applicant for financial assistance is a State Agency having statewide jurisdiction and responsibility for the proposed action;

(b) FmHA or its successor agency under Public Law 103-354 furnishes guidance to the State Agency as to the scope and content of the impact statement and participates in the preparation;

(c) FmHA or its successor agency under Public Law 103-354 independently evaluates the statement and rectifies any major deficiencies prior to its circulation by the Agency as an EIS;

(d) FmHA or its successor agency under Public Law 103-354 provides,

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

(e) If there is any disagreement on the impacts addressed by the review process outlined in paragraph (d) of this section, FmHA or its successor agency under Public Law 103-354 prepares a written assessment of these impacts and the views of the land management entities for incorporation into the draft impact statement.

§ 1940.335 Environmental review of FmHA or its successor agency under Public Law 103-354 proposals for legislation.

(a) As stated in §1940.312(d)(4) of this subpart, all FmHA or its successor agency under Public Law 103-354 proposals for legislation will receive an environmental assessment. The definition of such a proposal is contained in §1508.17 of the CEQ regulations.

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

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

§ 1940.336 Contracting for professional services.

(a) Assistance from outside experts and professionals can be secured for the purpose of completing EIS, assessments, or portions of them. Such assistance will be secured according to the Federal and Agriculture Procurement Regulations contained in chapters 1 and 4 of title 48 of the Code of Federal Regulations.

(b) The contractor will be selected by FmHA or its successor agency under Public Law 103-354 in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors competing for the work will be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

§§ 1940.337-1940.349

7 CFR Ch. XVIII (1-1-09 Edition)

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

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

§§ 1940.337-1940.349 [Reserved]

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

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

**EXHIBIT A TO SUBPART G OF PART 1940—
DEPARTMENTAL REGULATION**

Number: 9500-3.

Subject: Land Use Policy.

Date: March 22, 1983.

OPI: Land Use Staff, Soil Conservation Service.

SECTION

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

1. PURPOSE

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

Land use allocation decisions are matters of concern to USDA. Decisions concerning land use arise from needs to accommodate needed growth and development; prevent unwarranted and costly sprawl; avoid unwar-

ranted conversion of farm, range, and forest lands and wetlands from existing uses and unwarranted encroachment on flood plains; maintain and enhance agricultural and forest production capabilities; maintain wildlife, fish, and seafood habitat; provide or improve community services and facilities; assure appropriate environmental quality; and assure adequate supplies of suitable-quality water. These needs are highly interdependent and often compete with each other for the limited supply of available land and water.

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

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

2. CANCELLATIONS

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

3. POLICY

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

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

b. Assure that programs of the agencies within the Department discourage the unwarranted conversion to other uses of prime

and unique farmlands, farmlands of statewide or local importance, and prime rangelands, as defined in appendix A; the unwarranted alteration of wetlands or flood plains; or the unwarranted expansion of the peripheral boundaries of existing settlements.

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

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

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

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

g. Advocate among Federal agencies:

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

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

4. ABBREVIATIONS

USDA—U.S. Department of Agriculture.

NRE—Natural Resources and Environment Committee.

5. DEFINITIONS

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

6. RESPONSIBILITIES

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

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

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

(2) Monitor implementation of this policy;

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

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

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

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

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

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

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

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

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

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

7. APPENDIX A—DEFINITIONS

The following definitions apply to this Departmental Regulation.

1. IMPORTANT FARMLANDS¹

a. Prime Farmlands¹

(1) *General Criteria.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban

built-up land or water). It has the soil quality, growing season, and moisture supply needed to produce, economically, sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0- to 7-percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0- to 5-percent slopes.

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

(a) The soils have:

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

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

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

(b) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches, have a mean annual temperature higher than 32 degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees Fahrenheit; in soils that

¹ 17 CFR 657.5.

have no 0 horizon, the mean summer temperature is higher than 59 degrees Fahrenheit; and

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

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

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

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

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

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

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

b. Unique Farmland¹

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

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

c. Additional Farmland of Statewide Importance¹

This is land, in addition to prime and unique farmlands, that is of statewide impor-

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

d. Additional Farmland of Local Importance¹

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

2. PRIME FOREST LANDS²

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

a. Prime Timberland²

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

b. Unique Timberland²

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

c. Timberland of Statewide Importance²

This is land, in addition to prime and unique timberlands, that is of statewide importance for the growing of wood. Criteria for defining and delineating these lands are

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

¹See footnote 1 on previous page.

to be determined by State forestry planning committees or appropriate State organizations.

d. Timberlands of Local Importance²

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

3. WETLANDS³

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

4. FLOOD PLAINS³

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

5. PRIME RANGELAND⁴

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

EXHIBIT B TO SUBPART G OF PART 1940—
DEVELOPMENT AND IMPLEMENTATION
OF NATURAL RESOURCE MANAGEMENT GUIDE

1. The State Director shall complete the natural resource management guide within 12 months from the effective date of this subpart and issue the guide as a State supplement after prior approval by the Administrator. A summary of the basic content, purposes, and uses of the guide is contained in §1940.305 of this subpart. The guide shall be prepared in draft form and be provided for review and comment to USDA agencies, appropriate Federal and State agencies, State and regional review agencies assigned the

³Definitions contained in Executive Orders 11988 and 11990.

⁴USDA proposed definition for intradepartmental use only.

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

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

3. After the Administrator approves the natural resource management guide, it will become effective 4 months from that date. This interim period shall be used to inform local, State, and Federal agencies, localities, organizations, and interested citizens of the content of the guide. In this manner, those parties intending to seek FmHA or its successor agency under Public Law 103-354 assistance or to coordinate FmHA or its successor agency under Public Law 103-354 assistance programs with their own programs will be able to gain for their planning needs an understanding of our guide.

4. Completed natural resource management guides shall be reviewed every 2 years and updated by the State Director to reflect newly identified geographical areas of concern or policy revisions at the national, State, regional or local level. They will also be revised, as necessary, through appropriate guidance from the Administrator. Revisions shall be transmitted to the Administrator for postapproval and shall be considered approved if either no comments are raised by

the Administrator within 30 days of receipt of the State Director's transmittal letter or the administrator specifically approves them before the 30 days expire. Public review of a revision will not be required. However, if in the opinion of the State Director the proposed revision will substantially change the previously adopted natural resource management guide, a public review shall be conducted of the revision in the same manner as that described in paragraph 1 of this exhibit for the development of the original guide. Such review shall occur prior to the transmittal of the revision to the Administrator. If the State Director believes that at the expiration of any 2-year review period there is need to update the guide, a statement to this effect shall be filed with the Administrator.

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

- a. National Register of Historic Places to include monthly supplements as designated by the Department of the Interior (DOI), and the State Historic Preservation Plans. This list is issued as a State supplement to subpart F or part 1901 of this chapter;
- b. Rivers designated as part of the Wild and Scenic Rivers System and rivers under study for inclusion in the system, as published by DOI;
- c. Important farmlands;
- d. Prime rangelands.
- e. Prime forestlands;
- f. Wetland inventory;
- g. Floodplain inventory as issued by the Federal Emergency Management Administration;
- h. Endangered Species and Critical Habitats as listed or proposed for listing by the Department of Commerce (DOC) and DOI;
- i. Sole source aquifer recharge areas as designated by the Environmental Protection Agency (EPA);
- j. Air Quality Control Regions as designated by EPA;
- k. National Registry of Natural Landmarks as published by DOI;
- l. Coastal Barrier Resources System;
- m. State inventories or planning documents identifying important land uses, particularly those not covered by the above items, such as wildlife refuges, important

habitats, and areas of high water quality, or scenic or recreational value;

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

o. Coastal Zone Management Areas.

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

7. Development of the inventory by the State Director will require consultation and assistance from a variety of agencies and experts. This consultation should begin with Department agencies and be accomplished through appropriate, State-level USDA committees. The objective should be to determine the land classification data that has been compiled and that which is in the process of being compiled either by USDA agencies or their counterparts at the state level. The Memorandum of Understanding executed in May 1979 between the Soil Conservation Service (SCS) and FmHA or its successor agency under Public Law 103-354 should be utilized as the basis for seeking SCS's assistance in this data collection effort. (See FmHA Instruction 2000-D, exhibit A, which is available in any FmHA or its successor agency under Public Law 103-354 Office.) Direct contacts should then be made with State agencies, in particular with the appropriate office of State planning, to determine the availability of State inventories and State land use policies and priorities. Similar discussions should be held with substate regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. County Supervisors shall contact local officials and shall be responsible for being familiar with and for assembling similar inventories, land use policies, or protective requirements developed by the local government agencies within the supervisor's territorial jurisdiction.

8. Another important element of the natural resource management guide shall be the examination of any major environmental impacts on the State or a substate area resulting from the cumulative effects of FmHA or its successor agency under Public Law 103-354-assisted project over the last several years. In this examination, particular emphasis should be given to the cumulative impacts of water resource projects such as irrigation systems. This should be done in consultation with experts within the appropriate State agencies and the U.S. Geological Survey. The housing programs should also be given a particular emphasis with respect to their cumulative impacts. More detailed

guidance on the accomplishment of this cumulative impact section of the natural resource management guide, as well as the overall content of the guide, shall be provided by the Administrator. In preparing the State's natural resource management guide and in assembling inventories of critical resources, Agency staff should not lose sight of the basic purposes of this effort. The development of lengthy and complex guides and the amassing of huge inventories is not our goal. In the end, the material must be useable and serve as a tool for better decision-making. The basic purposes of this guide and inventory, then, are to provide a basis for developing comprehensive, statewide, rural development investment strategies that (i) do not conflict with Federal, State, and local mandates to preserve and protect important land and environmental resources, (ii) that do not create short- or long-term development pressures which would lead to the unnecessary conversion of these resources, and (iii) which effectively support and enhance Federal, State, and local plans to preserve these resources.

EXHIBIT C TO SUBPART G OF PART 1940—
IMPLEMENTATION PROCEDURES FOR
THE FARMLAND PROTECTION POLICY
ACT; EXECUTIVE ORDER 11988,
FLOODPLAIN MANAGEMENT; EXECU-
TIVE ORDER 11990, PROTECTION OF
WETLANDS; AND DEPARTMENTAL
REGULATION 9500-3, LAND USE POL-
ICY

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97-98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Soil Conservation Service (SCS), as required by the Act, has promulgated implementation procedures for the Act at 7 CFR part 658 which are hereafter referred to as the SCS rule. This rule applies to all federal agencies. The Departmental Regulation 9500-3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as exhibit A to this subpart and affects only USDA agencies. For additional requirements that apply to some Farmer Program loans and guarantees and loans to an Indian Tribe or Tribal Corporation and that cover the conservation of wet-

lands and highly erodible land, see exhibit M of this subpart.

2. *Implementation.* Each proposed lease or disposal of real property by FmHA or its successor agency under Public Law 103-354 and application for financial assistance or subdivision approval will be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the lease, disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.¹ Since these actions have no potential to convert land uses, this finding would simply be made by the preparer in completing the environmental assessment for the action. Also, actions that convert important farmland through the construction of on-farm structures necessary for farm operations are exempt from the farmland protection provisions of this exhibit. For other actions, the following implementation steps must be taken:

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the appendix to the Departmental Regulation. The SCS rule also defines important farmland for purposes of the Act. Since the SCS's definition of prime farmland differs from the Departmental Regulation's definition, both definitions must be used and if either or both apply, the provisions of this exhibit must be implemented. It is important to note the definition of important farmland in both the SCS rule and the Departmental Regulation because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government to be of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form FmHA or its successor agency under Public Law 103-354 1940-22, "Environmental Checklist For Categorical Exclusions," the preparer must determine if the project is either located in or will affect one or more of the

¹See special procedures in item 3 of this exhibit if the existing structure or real property is located in a floodplain or wetland.

land resources covered by the SCS rule or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, SCS personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA or its successor agency under Public Law 103-354 and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See FmHA Instruction 2000-D, exhibit A, available in any FmHA or its successor agency under Public Law 103-354 office.)

(1) *Important Farmland, Prime Forest Land, Prime Rangeland*—The preparer of the environmental review document will review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. If the general area contains important farmland or if no important farmland map exists for the project area, the preparer of the environmental review will request SCS's opinion on the presence of important farmland by completing Form AD-1006, "Farmland Conversion Impact Rating," according to its instructions, and transmitting it to the SCS local field office having jurisdiction over the project area. This request will also indicate that SCS's opinion is needed regarding the application to the project site of both definitions of prime farmland, the one contained within its rule and the one contained within the Departmental Regulation. SCS's opinion is controlling with respect to the former definition and advisory with respect to the latter. No request need be sent to SCS for an action meeting one of the exemptions contained in item number 2 of this exhibit.

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

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

(3) *Wetlands*—FWS is presently preparing wetland maps for the nation. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning the status of wetland mapping by FWS and information on State and local wetland surveys. Exhibit K of this subpart contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information can be obtained by using topographic and soils maps or aerial photographs. State-specific lists of wetland soils and wetland vegetation are also available from the FWS Regional Wetland coordinators. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of FWS field staff in reviewing the site can often be the most effective means. Because of the unique wetland definition used in exhibit M of this subpart, SCS wetland determinations are required for implementing the wetland conservation requirements of that exhibit.

b. *Findings* (1) *Scope*—Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA or its successor agency under Public Law 103-354's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the implementation requirements of the Act and the Departmental Regulation. Consequently, after reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agencies, the FmHA or its successor agency under Public Law 103-354 preparer must determine, as the second implementation step, whether the applicant's proposal:

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

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

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

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

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

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

(a) *Search for Practicable Alternatives*²—In consultation with the applicant and the interested public, the preparer will carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility. Possible alternatives include:

- (i) The selection of an alternative site;
- (ii) The selection of an alternative means to meet the applicant's objectives; or
- (iii) The denial of the application, *i.e.*, the no-action alternative.

When the resource that may be converted is important farmland, the preparer will follow the Land Evaluation and Site Assessment (LESA) point system contained within the SCS rule in order to evaluate the feasibility of alternatives. When the proposed site receives a total score of less than 160 points, no additional sites need to be evaluated. Rather than use the SCS LESA point system, the State Director has the authority to use State or local LESA systems that have been approved by the governing body of such jurisdiction and the SCS state conservationist. After this authority is exercised, it must be used for all applicable FmHA or its successor agency under Public Law 103-354 actions within the jurisdiction of that approved LESA system.

(b) *Inform the Public*—The Department Regulation requires us in section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that

²When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA or its successor agency under Public Law 103-354's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

lose their status as an exclusion for any of the reasons stated in §1940.317(e) of this subpart. The notification will be published and documented in the manner specified in §1940.331 of this subpart and will contain the following information:

- (i) A brief description of the application or proposal and its location;
- (ii) The type(s) and amount of important land resources to be affected;
- (iii) A statement that the application or proposal is available for review at an FmHA or its successor agency under Public Law 103-354 field office (specify the one having jurisdiction over the project area); and
- (iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA or its successor agency under Public Law 103-354 within 30 days following the date of publication. (Specify the FmHA or its successor agency under Public Law 103-354 office processing the application or proposal for receipt of comments.)

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

(c) *Determine Whether Practicable Alternative Exists*—(i) *Alternative exists*—If the preparer concludes that a practicable alternative exists, the preparer will complete step 2b(3)(e)(ii) of this exhibit and transmit the assessment for the approving official's review in the manner specified in §1940.316 of this subpart. If the findings of this review are similar to the preparer's recommendation, FmHA or its successor agency under Public Law 103-354 will inform the applicant of such findings and processing of the application will be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA or its successor agency under Public Law 103-354. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the preparer will work closely with the applicant to this end. Upon receipt of the amended application, the preparer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the preparer's recommendations, the former will ensure that the findings are appropriately documented in step 2b(3)(e)(ii) of this exhibit and any remaining consideration given to mitigation measures, step 2b(3)(d) of this exhibit.

(ii) No Practicable Alternative Exists—On the other hand, if the preparer concludes that there is no practicable alternative to the conversion, the preparer must then continue with step 2b(3)(d) of this exhibit, immediately below.

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

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

(i) The application would result in the direct or indirect conversion of important farmland and (is/is not) compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA or its successor agency under Public Law 103-354 determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conver-

sion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and (is/is not) incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA or its successor agency under Public Law 103-354 determine, based upon the attached analysis, that there is a practicable alternative to this action, and the processing of this application be discontinued.

(f) *Implement findings*—The completed environmental assessment and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders will be processed and made according to §1940.316 of this subpart. Whenever this determination is as stated in step 2b(3)(e)(i) above, the action will be so structured as to ensure that any recommended mitigation measures are accomplished. See §1940.318(g) of this subpart. Whenever the determination is as stated in step 2b(3)(e)(ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA or its successor agency under Public Law 103-354 involvement will be as specified in Item 2b(3)(c)(i) of this exhibit.

3. *Special Procedures and Considerations When a Floodplain or Wetland Is the Affected Resource Under Executive Order 11988 and 11990.* a. *Scope.* (1) *Geographical Area*—The geographical area that must be considered when a floodplain is affected varies with the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the preparer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

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

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

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

(d) Multi-family housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) **Threshold of Impact**—The Executive orders differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, there would be an impact to a floodplain whenever either (a) the action or its related activities would be located within a floodplain, or (b) the action through its indirect impacts has the potential to result in development within a floodplain. The only exception to this statement is when the preparer determines that the locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not affected.

b. *Treatment of Existing Structures.* (1) **Non-FmHA or its Successor Agency under Public Law 103-354-Owned Properties**—The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this exhibit must be accomplished for any action located in a floodplain or wetland and involving either (a) the purchase of an existing structure or facility or (b) the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) **FmHA or its Successor Agency under Public Law 103-354-Owned Real Property**—The requirement in paragraph 3 b (1) immediately above also applies to any substantial improvements made to FmHA or its successor agency under Public Law 103-354-owned real property with the exception of the public notice requirements of this exhibit. Irrespective of any improvements, whenever FmHA or its successor agency under Public Law 103-354 real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations

as well as other appropriate restrictions, as determined by the FmHA or its successor agency under Public Law 103-354 official responsible for the conveyance, to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law. Appropriate restrictions will be developed in consultation with the U.S. Fish and Wildlife Service (FWS) as specified in the Memorandum of Understanding with FWS contained in subpart LL of part 2000 of this chapter. Applicable restrictions will be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA or its successor agency under Public Law 103-354 official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. See Item 3 d of this exhibit and subpart C of part 1955 of this chapter for guidance on the proper formats to be used with respect to notices and deed restrictions. The steps and analysis conducted to comply with the requirements of this paragraph must be documented in the environmental review document for the proposed lease or sale.

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

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

the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Non-structural flood protection methods are measures which:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. *The Relationship of the Executive Orders to the National Flood Insurance Program.* The National Flood Insurance Program establishes the floodplain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA or its successor agency under Public Law 103-354 determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have been included in the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency’s flood insurance requirements are explained in subpart B of part 1806 of this chapter (FmHA Instruction 426.2). It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA or its successor agency under Public Law 103-354 financial assistance unless the project area is participating in the National Flood Insurance Program.

[53 FR 36262, Sept. 19, 1988]

EXHIBIT D TO SUBPART G OF PART 1940— IMPLEMENTATION PROCEDURES FOR THE ENDANGERED SPECIES ACT

1. FmHA or its successor agency under Public Law 103-354 shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property by FmHA or its successor agency under Public Law 103-354 and to all FmHA or its successor agency under Public Law 103-354 applications for financial assistance and subdivision approval, including those applications which are exempt from environmental assessments. (See §1940.310.) Unless repeated in this paragraph, the definitions for the terms utilized are found in 50 CFR 402.02.

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

3. When an application to FmHA or its successor agency under Public Law 103-354 involves financial assistance or permit approval from another Federal agency(s), the FmHA or its successor agency under Public Law 103-354 reviewer shall work with the other Agency to determine a lead Agency for the consultation process. When FmHA or its successor agency under Public Law 103-354 is not the lead Agency, the reviewer shall ensure that the lead Agency informs the appropriate Area Manager, U.S. Fish and Wildlife Service (FWS), or Regional Director, National Marine Fisheries Service (NMFS), of FmHA or its successor agency under Public Law 103-354's involvement.

4. Each disposal action, application for financial assistance or subdivision approval shall be reviewed by the FmHA or its successor agency under Public Law 103-354 official responsible for completing environmental assessments in order to determine if the proposal either may affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat.

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

b. For those applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA or its successor agency under Public Law 103-354 1940-22, "Environmental Checklist For Categorical Exclusions," and shall be accomplished as early as possible after receipt of the application and prior to approval of the application.

c. For applications subject to an environmental impact statement, FmHA or its successor agency under Public Law 103-354 shall request from the Area Manager, FWS, and the Regional Director, NMFS, a list of the proposed and listed species that may be in the area of the proposal. Within 30 days, the FWS and NMFS will respond to FmHA or its successor agency under Public Law 103-354 with this list. FmHA or its successor agency under Public Law 103-354 shall then conduct, as part of the process of preparing the draft environmental impact statement, a biological assessment of these species to determine which species are in the area of the proposal and how they may be affected. This biological assessment should be completed within 180 days or a time mutually agreed upon between FmHA or its successor agency under Public Law 103-354 and FWS or NMFS. Upon completion of the biological assessment, if FmHA or its successor agency under Public

Law 103-354 determines either that the proposal may affect a listed species or critical habitat or is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, the formal consultation procedures shall be initiated as specified in paragraph 7b below. To the extent practical, these procedures shall be concluded and their results reflected in the draft EIS. For all draft EISs in which FmHA or its successor agency under Public Law 103-354 determines there will be no effect upon a listed or proposed species or critical habitat and FWS or NMFS indicated the presence of such species upon the initial inquiry, a copy of the draft shall be provided to that agency for review and comment.

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

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

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

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

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

(iii) Cover or shelter;

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

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

6. It is also important to note that the consultation procedures differ when the subject of the consultation is a listed species or critical habitat as opposed to a proposed species or critical habitat. The latter are defined as those that the Secretary of Interior or Commerce are considering for listing and have so

proposed through notification in the FEDERAL REGISTER. When listed species or critical habitats are involved, FmHA or its successor agency under Public Law 103-354 shall initiate formal consultation procedures whenever it determines that a proposed project may affect them, either beneficially or adversely. For proposed species or critical habitats, FmHA or its successor agency under Public Law 103-354 shall first determine if the proposed project is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Whenever this determination is made, FmHA or its successor agency under Public Law 103-354 shall confer with the appropriate agency identified in paragraph 7 of this exhibit and, in so doing, shall focus on (i) determining the status of the listing process, and (ii) attempting to cooperatively develop alternatives or measures for inclusion in the project that avoid or mitigate the identified adverse impacts. The results of this process shall be documented in the environmental review being done for the proposed project and, if this review is an environmental assessment, shall be an important factor in determining the need for an environmental impact statement. No action shall be taken by the approving official on the application until the requirement to confer on proposed species or critical habitat has been completed. Paragraphs 7 through 9 of this exhibit outline the formal consultation procedure for listed species or critical habitats.

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

a. Whenever the reviewer, after reviewing the list and contacting appropriate experts, formally determines that the proposal will have no effect on a listed or proposed species or its critical habitat, these review procedures are completed, unless new information comes to light as discussed in paragraph 9 of

this exhibit, or consultation is requested by the appropriate Area Manager, FWS, or Regional Director, NMFS.

b. If the reviewer determines there may be an effect on a listed species or a critical habitat or is unable to make a clear determination, the reviewer shall so inform the SEC (assuming the reviewer is not the SEC). The latter shall either (i) convey a written request for consultation, along with available information to the appropriate Area Manager, FWS or Regional Director, NMFS, for the Federal region where the proposal will be carried out, or (ii) request Program Support Staff (PSS) to perform such consultation. FmHA or its successor agency under Public Law 103-354 shall initiate this formal consultation process and not the applicant. See paragraph 4.c. of this exhibit for initiating consultation where an environmental impact statement is being done for the application. Until the consultation process is completed, as outlined in 50 CFR 402.04, FmHA or its successor agency under Public Law 103-354 shall not approve the application. Should the need for consultation be identified after application approval, FmHA or its successor agency under Public Law 103-354 shall refrain from making any irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

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

a. Whenever the Area Manager, FWS, or Regional Director, NMFS, informs FmHA or its successor agency under Public Law 103-354 that insufficient information exists to conclude the consultation process, the SEC with assistance as feasible from the FWS or NMFS and State sources of expertise shall then obtain additional information and conduct, as needed, biological surveys or studies to determine how the proposal may affect listed species or their critical habitat. The cost and performance of such studies shall be handled in the same manner as in the preparation of an Environmental Impact Statement. (See §1940.336 of this subpart.)

b. Whenever the Area Manager, FWS, or Regional Director, NMFS, responds that the proposal will either promote the conservation of a listed species or is not likely to jeopardize the continued existence of a listed or proposed species or result in the destruction or adverse modification of its critical habitat, the FmHA or its successor agency under Public Law 103-354 reviewer shall formally make a similar determination, attaching the response as documentation. This concludes the formal consultation process unless new information comes to light as discussed in paragraph 9 of this exhibit.

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

d. Whenever the appropriate Area Manager, FWS, or Regional Director, NMFS, determines that the proposal is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the FmHA or its successor agency under Public Law 103-354 applicant shall be so informed and the project denied on this basis. However, if the State Director believes that funding or approval of the application is (i) of national, regional, or great local significance, and (ii) that there are no reasonable and prudent alternatives to avoiding the listed species impact, the State Director can request the Administrator, through PSS, to review the proposal and the results of the consultation process. Based upon this review, the Administrator shall either inform the State Director that a request for an exemption from section 7 of the Endangered Species Act is not warranted and the application shall be denied or, if the Administrator believes it is warranted, shall request an exemption from the Endangered Species Committee established by section 7(e) of the Act. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of the exemption request.

9. Once completed, the consultation process shall be reinitiated by FmHA or its successor agency under Public Law 103-354 or upon request of the appropriate Area Manager, FWS, or Regional Director, NMFS, if:

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

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

10. In completing the above compliance procedures, particularly when consulting with the referenced agencies, formally or informally, the preparer of the environmental review document will request information on whether any Category I or Category II species may be present within the project area. These are candidate species; they are presently under consideration for listing under section 4 of the Endangered Species Act. Cat-

egory I species are those for which FWS currently has substantial data on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Currently data are being gathered concerning essential habitat needs and, for some species, data concerning the precise boundaries of critical habitat designations. Development and publication of proposed rules on such species is anticipated. Category II comprises species for which information now in the possession of the FWS indicates that proposing to list the species as endangered or threatened is possibly appropriate but for which conclusive data on biological vulnerability and threat(s) are not currently available to presently support proposed rules. Whenever a Category I or II species may be affected, the preparer of the environmental review document will determine if the proposed project is likely to jeopardize the continued existence of the species. Whenever this determination is made, the same compliance procedures specified in paragraph 6 of this exhibit for a proposed species will be followed. The purpose of the requirements of this paragraph is to comply with the National Environmental Policy Act as well as Departmental Regulation 9500-4, Fish and Wildlife Policy, which specifies that USDA agencies will avoid actions which may cause a species to become threatened or endangered.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT E TO SUBPART G OF PART 1940— IMPLEMENTATION PROCEDURES FOR THE WILD AND SCENIC RIVERS ACT

1. Each application for financial assistance or subdivision approval as well as the proposed disposal of real property by FmHA or its successor agency under Public Law 103-354 shall be reviewed to determine if it will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior. The Nationwide Inventory identifies those river segments that, after preliminary review, appear to qualify for inclusion in the system. (For purposes of this subpart, river segments in the Nationwide Inventory shall be treated the same as segments within the system with the exception of paragraph 8.) For applications subject to environmental assessments, the review shall be accomplished as part of the assessment. For applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA or its successor agency under Public Law 103-354 1940-

22, "Environmental Checklist For Categorical Exclusions," within the reviewing office and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. The FmHA or its successor agency under Public Law 103-354 official responsible for completing the environmental assessment shall accomplish this review. (See §1940.316 of this subpart.)

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

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

4. If the review is at the County or District Office level, the reviewer can request the State Director (see §1940.307 of this subpart) to perform the above consultation. The State Director can in turn make a similar request of the National Office. If not requested to perform the consultation for applications approvable at the County and District Office levels, the SEC shall be informed whenever NPS or FS advises that there is a potential for an adverse impact on a river within the

system or that protective measures need to be included or designed into the proposal. In all cases, consultation shall be initiated by FmHA or its successor agency under Public Law 103-354 and not the applicant. Until consultation is complete, FmHA or its successor agency under Public Law 103-354 shall not approve the application. Should the need for consultation be identified after application approval, FmHA or its successor agency under Public Law 103-354 shall, if still within its power at the time of identification, refrain from making any irreversible or irretrievable commitments of resources which would foreclose the consideration of modifications or alternatives to the project.

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

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

7. If NPS or FS advises that the proposal will have an unavoidable adverse effect, as described in paragraph 3 of this exhibit, on a river segment which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system, the FmHA or its successor agency under Public Law 103-354 applicant will be informed by the reviewing office and the application denied on this basis. However, if the State Director disagrees with this determination, the State Director can request the Administrator to review the proposal and attempt to further resolve the matter. The specific reasons for disagreement along with supporting documentation must be included in such a request. Based upon a review of this request, the Administrator shall either inform the State Director that no further consultation is warranted and the application shall be denied or shall request the headquarters staff of NPS or FS to further review the matter. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of this further review and consultation.

8. If NPS or FS advises that the proposal will have an adverse effect, as described in paragraph 3 of this exhibit, on a river segment identified in the Nationwide Inventory, the reviewer shall further consult with NPS

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

9. If an application involves financial assistance or permit approval from another Federal Agency, the FmHA or its successor agency under Public Law 103-354 reviewer shall work with the other agency(s) to determine a lead Agency for the consultation process. When FmHA or its successor agency under Public Law 103-354 is not the lead Agency, the reviewer shall ensure that the lead Agency informs NPS or FS of FmHA or its successor agency under Public Law 103-354's involvement.

10. Once completed, the consultation process shall be reinitiated by FmHA or its successor agency under Public Law 103-354 if new information or modification of the proposal reveals impacts to a river within the System or Nationwide Inventory.

EXHIBIT F TO SUBPART G OF PART 1940—
IMPLEMENTATION PROCEDURES FOR
THE COASTAL BARRIER RESOURCES
ACT

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

2. On coastal barriers that are included in the system, the Act prohibits any new expenditures or new financial assistance by the Federal Government. There are some limited exceptions that are contained in Section 6 of the Act and listed in exhibit L of this subpart. Consequently, all of the following actions must be reviewed by the environmental reviewer to determine if they would be located within the System: any application for financial assistance, any proposed direct expenditure of FmHA or its successor agency under Public Law 103-354 funds for construction or maintenance purposes, any request for subdivision approval, and any proposed disposal of real property that includes any form of financial assistance or subsidy to the purchaser. The boundaries of the system can

be determined by reviewing a series of maps passed with the legislation and distributed by the Department of the Interior. Each State Director is responsible for ensuring that those field offices having components of the system within their jurisdictions are aware of the system's boundaries therein.

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

4. For those actions that are reviewed and determined not to be within the System, the environmental reviewer must document this result by checking the appropriate compliance blocks on either Form FmHA or its successor agency under Public Law 103-354 1940-22, "Environmental Checklist for Categorical Exclusions," or Form FmHA or its successor agency under Public Law 103-354 1940-21, "Environmental Assessment for Class I actions," or by so stating this result in the environmental assessment for Class II Actions (exhibit H), depending upon whichever format is applicable to the action under review.

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

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

b. If the environmental reviewer concludes that the proposed action may meet the exception criteria, the approving official must be so informed. Whenever the approving official agrees or makes a similar determination as a result of the review conducted in Item a immediately above, consultation shall be initiated with the Secretary of the Interior by either the State Director or the Administrator for a National Office activity. FmHA or its successor agency under Public Law 103-354 shall request the Secretary's views as to whether the exception criteria are met and shall provide the Secretary with the following information:

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

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

(3) The applicable exception criteria and FmHA or its successor agency under Public Law 103-354's reasons for believing they apply to this action; and

(4) If a Section 6(a)(6) exception is claimed, FmHA or its successor agency under Public Law 103-354's reasons for believing the action to be consistent with the purposes of the Act.

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

EXHIBIT G TO SUBPART G OF PART 1940
[RESERVED]

EXHIBIT H TO SUBPART G OF PART 1940—
ENVIRONMENTAL ASSESSMENT FOR
CLASS II ACTIONS

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

The preparer will consult as indicated in §1940.318(b) of this subpart with appropriate experts from Federal, State, and local agencies, universities, and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact will be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The FmHA or its successor agency under Public Law 103-354 environmental assessment shall be prepared in the following for-

mat. It shall address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant, Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information."

The assessment has been designed to cover the wide variety of projects and environments with which the Agency deals. Consequently, not every issue or potential impact raised in the assessment may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors, and issues which may be encountered. In preparing an assessment, each topic heading identified by a Roman numeral and each environmental factor listed under topic heading IV, such as air quality, for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located, and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (*i.e.*, water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

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

I. PROJECT DESCRIPTION AND NEED

Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA or its successor agency under Public Law 103-354's position regarding the need for it, and the extent or area of land to be considered as the project site.

II. PRIMARY BENEFICIARIES AND RELATED ACTIVITIES

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of a FmHA or its successor agency under Public Law 103-354 action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA or its successor agency under Public Law 103-354 action or are themselves induced or supported by the FmHA or its successor agency under Public Law 103-354 action or another related activity. These activities may have been completed in the very recent past and are now operational, or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be federally permitted or assisted. When they are, identify the involved Federal Agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

III. DESCRIPTION OF PROJECT AREA

Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey "15 minute" ("7½ minute," if available,) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4), if completed, a standard soil survey for the project, and (5), if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

IV. ENVIRONMENTAL IMPACT

1. Air Quality. Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological condi-

tions hinder or affect the dispersal of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality, and topographical and meteorological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

2. Water Quality. Discuss, in terms of amounts and types of effluents, all aspects of the project including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by EPA, contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA or its successor agency under Public Law 103-354 project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 area-wide waste treatment management plan. Discuss the project's consistency with applicable State water quality standards to include a discussion of whether or not the project would either impair any such standard or fail to meet antidegradation requirements for point or nonpoint sources. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer

to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

3. Solid Waste Management. Indicate all aspects of the project including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy of these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

4. Land Use. Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to those unique or sensitive areas discussed under Section III, Description of Project Area, which are not covered by the specific analyses required in Sections V-XI. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts on these plans. For all actions subject to the requirements of exhibit M of this subpart indicate (a) whether or not highly erodible land, wetland or converted wetland is present, (b) if any exemption(s) applies to the requirements of exhibit M, (c) the status of the applicant's eligibility for an FmHA or its successor agency under Public Law 103-354 loan under exhibit M and (d) any steps the applicant must take prior to loan approval to retain or retain its eligibility. Attach a completed copy of Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," for the action.

5. Transportation. Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described

above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

6. Natural Environment. Indicate all aspects of the project including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

7. Human Population. Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc. will affect nearby residents and users of the project area and surrounding areas. Discuss whether the proposal will accommodate any population increases and, if so, describe the potential impacts of these increases on the area's public and community services such as schools, health care, social services, and fire protection. Cite contacts with appropriate experts.

8. Construction. Indicate the potential effects of construction of the project on air quality, water quality, noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

9. Energy Impacts. Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

10. Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire-prone locations, radiation, and aesthetic considerations. Cite any discussion with appropriate experts.

V. COASTAL ZONE MANAGEMENT ACT*

Indicate if the project is within or will impact a coastal area defined as such by the State's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

VI. COMPLIANCE WITH ADVISORY COUNCIL ON HISTORIC PRESERVATION'S REGULATIONS

In this Section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in subpart F of part 1901 of this chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process with the Advisory Council on Historic Preservation.

VII. COMPLIANCE WITH THE WILD AND SCENIC RIVERS ACT

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. See exhibit E for specific implementation instructions for this Act. A summary of discussions held or any required formal coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

*Complete only if coastal or Great Lakes State.

VIII. COMPLIANCE WITH THE ENDANGERED SPECIES ACT

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis will be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate. Any formal or informal consultations conducted with these agencies as well as any State wildlife protection agency will also address impacts to Category I and Category II species. See exhibit D of this subpart for specific implementation instructions.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

IX. COMPLIANCE WITH FARMLAND PROTECTION POLICY ACT AND DEPARTMENTAL REGULATION 9500-3, LAND USE POLICY

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

X. COMPLIANCE WITH EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT, AND EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resources Council's *Floodplain Management Guidelines* for more specific guidance as well as exhibit C of this subpart.

RHS, RBS, RUS, FSA, USDA

Pt. 1940, Subpt. G, Exh. H

XI. COMPLIANCE WITH COASTAL BARRIER RESOURCES ACT

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

XII. STATE ENVIRONMENTAL POLICY ACT

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation. (See §1940.328 of this subpart for further guidance.)

XIII. CONSULTATION REQUIREMENTS OF EXECUTIVE ORDER 12372, INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

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

XIV. ENVIRONMENTAL ANALYSIS OF PARTICIPATING FEDERAL AGENCY

Indicate if another Federal Agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved Agency's environmental impact analysis and attach available documentation. (See §1940.318(d) of this subpart for further guidance.)

XV. REACTION TO PROJECT

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA or its successor agency under Public Law 103-354 to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

XVI. CUMULATIVE IMPACTS

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related activities and/

or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

XVII. ADVERSE IMPACT

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

XVIII. ALTERNATIVES

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

XIX. MITIGATION MEASURES

Describe any measures which will be taken or required by FmHA or its successor agency under Public Law 103-354 to avoid or mitigate the identified adverse impacts. Analyze the environmental impacts and potential effectiveness of the mitigation measures. Such measures shall be included as special requirements or provisions to the offer of financial assistance or other appropriate approval document, if this action does not involve financial assistance.

XX. CONSISTENCY WITH FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 ENVIRONMENTAL POLICIES

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

XXI. ENVIRONMENTAL DETERMINATIONS

The following recommendations shall be completed:

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

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

Not in compliance	In compliance	
.....	Clean Air Act.

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

c. I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA or its successor agency under Public Law 103-354 environmental policies, particularly those related to important farmland protection, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project

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

Signature of preparer* _____
 Date _____
 Title _____

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

I have reviewed this environmental assessment and supporting documentation. Following are my positions regarding its adequacy and the recommendations reached by the preparer. For any matter in which I do

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

not concur, my reasons are attached as exhibit ____.

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

Signature of State Environmental Coordinator _____
 Date _____

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

**EXHIBIT I TO SUBPART G OF PART 1940—
 FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT**

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

TO: Project File.

The attached environmental assessment has been completed for the subject proposal by the FmHA or its successor agency under Public Law 103-354 environmental reviewer. After reviewing the assessment and the supporting materials attached to it, I find that the subject proposal will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

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

Insert signature and title of approving official as specified in §1940.316 of this subpart.
 _____ (Date).

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

**EXHIBIT J TO SUBPART G OF PART 1940—
 LOCATIONS AND TELEPHONE NUMBERS OF FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION'S REGIONAL OFFICES**

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

RHS, RBS, RUS, FSA, USDA

Federal region	Location	FTS No.*	Commercial No.
X	Seattle, WA	396-0284	(206) 481-8800

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

**EXHIBIT K TO SUBPART G OF PART 1940—
LOCATIONS AND TELEPHONE NUMBERS OF U.S. FISH AND WILDLIFE SERVICE'S WETLAND COORDINATORS**

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

Region I

Portland, OR—FTS 429-6154; Commercial (503) 231-6154.
Areas Covered: California, Hawaii, Idaho, Nevada, Oregon, Washington, U.S. Pacific Trust, Territories and Possessions.

Region II

Albuquerque, NM—FTS 474-3152; Commercial (505) 766-2914.
Areas Covered: Arizona, New Mexico, Oklahoma, Texas.

Region III

Twin Cities, MN—FTS 725-3593; Commercial (612) 725-3593.
Areas Covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region IV

Atlanta, GA—FTS 242-6343; Commercial (404) 221-6343.
Areas Covered: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Panama Canal Zone, Puerto Rico, South Carolina, Tennessee, Virgin Islands.

Region V

Newton Corner, MA—FTS 829-9379; Commercial (617) 965-5100, Ext. 379.
Areas Covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Region VI

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

Pt. 1940, Subpt. G, Exh. L

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

Alaska Area Office

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

National Office

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

**EXHIBIT L TO SUBPART G OF PART 1940—
EXCEPTIONS TO RESTRICTIONS OF
COASTAL BARRIER RESOURCES ACT**

*Section 6 Exceptions**

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

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

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

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

(4) Military activities essential to national security;

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

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

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

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

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

(D) Scientific research, including but not limited to aeronautical, atmospheric, space,

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

geologic, marine, fish and wildlife and other research, development and applications.

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

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

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

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

EXHIBIT M TO SUBPART G OF PART
1940—IMPLEMENTATION PROCEDURES
FOR THE CONSERVATION OF WET-
LANDS AND HIGHLY ERODIBLE LAND
AFFECTING FARMER PROGRAM
LOANS AND LOANS TO INDIAN TRIBES
AND TRIBAL CORPORATIONS

1. *Background.* This exhibit implements the requirements of Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation, of Title XII of the Food Security Act of 1985, Pub. L. 99-198. The purposes of these Subtitles are to: Reduce soil loss due to wind and water erosion; protect the Nation's long term capability to produce food and fiber; reduce sedimentation; improve water quality; assist in preserving the Nation's wetlands; create better habitat for fish and wildlife through improved food and cover; and curb production of surplus commodities by removing certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland.

2. *Applicability.* The provisions of this exhibit apply to insured and guaranteed Farmer Program loans and loans to Indian Tribes and Tribal Corporations, subordinations, transfers and assumptions of such loans and leases and credit sales of inventory property. For the purpose of this exhibit, "Farmer Program loans" means Farm Operating Loans, Farm Ownership Loans, Emergency Loans, and Soil and Water Loans. As used in this exhibit, the word loan is meant to include guarantee as well. Applicant means an applicant for either an insured or guaranteed

loan and borrower means a recipient of either an insured or guaranteed loan.

3. *FmHA or its successor agency under Public Law 103-354 prohibited activities.* Unless otherwise exempted by the provisions of this exhibit, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA or its successor agency under Public Law 103-354 will not be used either (a) for a purpose that will contribute to excessive erosion of highly erodible land, or (b) for a purpose that will contribute to conversion of wetlands to produce an agricultural commodity. (See §12.2(a)(1) of subpart A of part 12 of subtitle A of title 7, which is attachment 1 of this exhibit and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of an agricultural commodity.) Consequently, any applicant proposing to use loan proceeds for an activity contributing to either such purpose, will not be eligible for the requested loan. Any borrower that uses loan proceeds in a manner that contributes to either such purpose will be in default on the loan.

a. *U.S. Department of Agriculture (USDA) definitions.* In implementing this exhibit, FmHA or its successor agency under Public Law 103-354 will use the USDA's definitions of the terms found at §12.2 of subpart A of part 12 of subtitle A of title 7 (attachment 1 of this exhibit which is available in any FmHA or its successor agency under Public Law 103-354 office).

b. *Highly erodible land conservation.* FmHA or its successor agency under Public Law 103-354 will conclude that excessive erosion of highly erodible land results or would result whenever (1) a field on which highly erodible land is predominant, as determined by the Soil Conservation Service (SCS), is or would be used to produce an agricultural commodity without conformance to a conservation system approved either by SCS or the appropriate conservation district, as evidenced by a statement from SCS, and (2) such field is not exempt from the provisions of this exhibit.

c. *Wetland conservation.* FmHA or its successor agency under Public Law 103-354 will conclude that a conversion of wetlands to produce an agricultural commodity has occurred or will occur whenever, as determined by SCS, (1) a wetland has or will be drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) that makes possible the production of an agricultural commodity without further application of the manipulations described herein if (a) such production would not have been possible but for such action and (b) before such action such land was wetland and was neither highly erodible land nor highly erodible cropland; and (2) neither

the affected wetland nor the activity affecting the wetland is exempt from the provisions of this exhibit.

d. *Use of loan proceeds.* To use loan proceeds for a purpose that contributes to either the excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity means that loan proceeds will or have been used in a way that contributes to either excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity by paying the costs of any of the following:

- (1) The purchase of the affected land;
- (2) Necessary planning, feasibility, or design studies;
- (3) Obtaining any necessary permits;
- (4) The purchase, contract, lease or renting of any equipment or materials necessary to carry out the land modification or conversion to include all associated operational costs such as fuel and equipment maintenance costs;
- (5) Any labor costs;
- (6) The planting, cultivating, harvesting, or marketing of any agricultural commodity produced on nonexempt highly erodible land to include any associated operational or material costs such as fuel, seed, fertilizer, and pesticide costs;
- (7) Within the crop year in which the wetland conversion was completed plus the next ten crop years thereafter, the planting, cultivating, harvesting, or marketing of any agricultural commodity produced on the affected land to include any associated operational or material costs such as fuel, seed, fertilizer and pesticide costs; or
- (8) For the same time period as in subparagraph 3d(7) above, any costs associated with using for on-farm purposes an agricultural commodity grown on the affected land.
- (9) Additionally, if loan proceeds will be or have been substituted to pay other costs at anytime during the life of the loan so that non-loan funds can be used to pay any of the above costs, it is deemed that loan proceeds will be or have been used for a purpose that contributes to the prohibited activities described in this paragraph.

4. *Prohibited activities under other USDA financial assistance programs.* Unless otherwise exempted, a person becomes ineligible for a variety of USDA financial assistance programs if that person produces in any crop year an agricultural commodity on either a field on which highly erodible land is predominant or a converted wetland. This ineligibility extends to any commodity produced during the crop year that the prohibited action occurs. The programs for which the person would be ineligible include price support payments, farm storage facility loans, disaster payments, crop insurance, payments made for the storage of an agricultural commodity, and payments received under a Con-

servation Reserve Program Contract. Farmer Program applicants and borrowers and applicants for, and borrowers of, loans to Indian Tribes and Tribal Corporations, therefore, can be affected not only by the FmHA or its successor agency under Public Law 103-354 prohibited activities but also by the broad USDA sweep of the Subtitles B and C restrictions. Should such an applicant rely or plan to rely on any of these other USDA financial assistance programs as a source of funds to repay its FmHA or its successor agency under Public Law 103-354 loan(s) and then fail to meet the other program(s)' eligibility criteria related to wetland or highly erodible land conservation, repayment ability to FmHA or its successor agency under Public Law 103-354 or the lender of and FmHA or its successor agency under Public Law 103-354 guaranteed loan may be jeopardized. Consequently, those applicants who are applying for a loan and those borrowers who receive a loan after the effective date of Subtitles B and C, as designated in part 12 of subtitle A of title 7, and who include in their projected sources of repayment, potential funds from any USDA program subject to some form of Subtitle B or C restrictions will have to demonstrate as part of their applications, and for borrowers, as part of their farm plan of operation, their ability to meet the other program(s)' eligibility criteria. Failure to meet the criteria will require the applicant or borrower either to document an alternative, equivalent source of revenues or, if possible, agree to undertake any steps necessary to gain eligibility for the other program(s). See paragraph 6 of this exhibit for a discussion of such steps.

5. *Applicant's responsibilities.*

a. *Required information.* Every applicant for a Farmer Program loan or a loan to an Indian Tribe or Tribal Corporation will be required to provide the following information and, as applicable, certification as part of the application for financial assistance. An application will not be considered to be complete until this information and certification are provided to FmHA or its successor agency under Public Law 103-354. Once an applicant has provided FmHA or its successor agency under Public Law 103-354 with information from SCS on the presence of any highly erodible land, wetland, or converted wetland this information need not be provided again for a subsequent loan unless there is either a change in the property upon which FmHA or its successor agency under Public Law 103-354 loan proceeds will be applied or a change in the previous information, such as a change in the status of an exemption. There is a continuing responsibility on FmHA or its successor agency under Public Law 103-354 borrowers using other USDA financial assistance programs for repayment purposes to provide the County Supervisor

with an executed copy of any similar certification required by the other USDA agency at the time of each required certification.

(1) A statement from the SCS indicating whether or not the applicant's farm property or properties contain either highly erodible land, wetland, or converted wetland and, if so, whether or not the applicant qualifies for a particular exemption to the provisions of this exhibit and as further detailed in paragraph 11 below. The property or properties will be listed and described in accordance with the Agriculture Stabilization and Conservation Service's (ASCS) farm records system. SCS's execution of Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," is necessary to meet this information requirement.

(2) If either highly erodible land, wetland, or converted wetland is present, the applicant's properly executed original or carbon copy of Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification."

b. *Required actions.* If at any time during the application review process any of the information or basis for an applicant's certification changes, the applicant (or the lender in the case of a guaranteed loan) must immediately notify FmHA or its successor agency under Public Law 103-354. If an applicant intends to produce an agricultural commodity on a nonexempt field on which highly erodible land is predominant, the applicant must develop a conservation system approved by SCS or the appropriate conservation district, demonstrate that it is or will be in compliance with the system at the time the field is to be used, and provide SCS's concurrence with this position.

6. *FmHA or its successor agency under Public Law 103-354's application review.* The FmHA or its successor agency under Public Law 103-354 County Supervisor will review the information provided by the applicant from SCS regarding the presence of any highly erodible land, wetland, or converted wetland and any possible exemptions and take the actions warranted by the presence of one or more of the circumstances described below. In carrying out these actions, FmHA or its successor agency under Public Law 103-354 will consider the technical decisions rendered by the SCS and the ASCS, as assigned to these agencies by subparts A, B, and C of part 12 of subtitle A of title 7 and further explained in this exhibit, to be final and controlling in the remaining FmHA or its successor agency under Public Law 103-354 decisionmaking process for this exhibit. It must also be understood that the definition of a wetland used by SCS in implementing this exhibit applies only to this exhibit and not to other wetland protection provisions of subpart G of part 1940.

a. *No highly erodible land, wetland, or converted wetland present.* The requested loan

can be approved under the provisions of this exhibit and, except for documenting this result in accordance with paragraph 8 of this exhibit, no further action is required.

b. *Converted wetland present.* The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the appropriate local office of the ASCS in order to determine if the converted wetland qualifies for the exemption specified in subparagraph c (1) of paragraph 11 of this exhibit. If so, no further action is necessary with respect to the converted wetland except for documenting the result. If the converted wetland does not qualify for an exemption, the County Supervisor will complete one or both of the following steps as the identified circumstances dictate.

(1) Step one. Review both the date that the wetland was converted and the proposed use of loan proceeds in order to determine if loan proceeds will be used for a prohibited activity as defined in subparagraph d of paragraph 3 of this exhibit. If not, the County Supervisor will so document this as specified in paragraph 8 of this exhibit; complete step two immediately below; and, if an insured loan will be approved, notify the applicant in writing, coincident with the transmittal of Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request For Obligation of Funds," and by using Form Letter 1940-G-1, "Notification of The Requirements of exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's converted wetland. If loan proceeds will be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of the applicant's ineligibility for the FmHA or its successor agency under Public Law 103-354 loan being requested. The applicant (and lender, in the case of a guaranteed loan) will be advised of any modifications to the application that could cure the ineligibility. Not growing an agricultural commodity on the converted wetland would cure the ineligibility, but the substitution of non-FmHA or its successor agency under Public Law 103-354 funds to grow an agricultural commodity on the converted wetland would not.

(2) Step two. The County Supervisor will review the applicant's sources of loan repayment to determine if they include funds from a USDA financial assistance program(s) subject to wetland conservation restrictions. If so, the County Supervisor will implement the actions in subparagraph e of this paragraph.

c. *Highly erodible land or wetland present.* The County Supervisor will discuss with the applicant (and lender, in the case of a guaranteed loan) and review the intended uses of the FmHA or its successor agency under

Public Law 103-354 loan proceeds as evidenced in any relevant application materials.

(1) *Proceeds to be used for prohibited activity.* If proceeds would be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of its ineligibility for the FmHA or its successor agency under Public Law 103-354 loan. The applicant (and lender, in the case of a guaranteed loan) will be informed of any modifications to its application that could cure the ineligibility, including financially feasible eligible loan purposes that could be helpful in implementing a conservation plan or installing a conservation system, should either be an appropriate cure. Substitution of non-FmHA or its successor agency under Public Law 103-354 monies to accomplish the prohibited activity would not cure the ineligibility, but actual elimination of the activity from the applicant's farm plan of operation would.

(2) *Proceeds not to be used for a prohibited activity.* If loan proceeds are not planned to be used for a prohibited activity, the County Supervisor will perform the following tasks:

(a) Document the above determination in the applicant's file as specified in paragraph 8 of this exhibit.

(b) If an insured loan will be approved and the requirements of subparagraph c (2)(c) of this paragraph do not apply, notify the applicant in writing, coincident with the transmittal of Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request For Obligation of Funds," and by using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land and/or wetland.

(c) Review the term of the proposed loan and take the following actions, as applicable.

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See §12.23 of subpart A of part 12 of subtitle A of title 7, which is attachment 1 of this exhibit and is available in any FmHA or its successor agency under Public Law 103-354 office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA or its successor agency under Public Law 103-

354 and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan repayment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination, loan repayment ability cannot be demonstrated, FmHA or its successor agency under Public Law 103-354 will deny the loan application. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request For Obligation of Funds," and using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by the 1990 deadline.

(ii) *Loan term exceeds January 1, 1995.* If the term of the proposed loan would exceed this date and the borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of the exhibit up until that date (see subparagraph b (4) of paragraph 11 of this exhibit) the County Supervisor will determine if it is financially feasible for the applicant, after January 1, 1985, to produce an agricultural commodity on the highly erodible land in compliance with a conservation system approved by SCS or the appropriate conservation district. Prior to loan approval, the applicant, the lender (if a guaranteed loan is involved), FmHA or its successor agency under Public Law 103-354 and SCS will resolve any doubts as to what extent production would be able to continue under a conservation system and as to the financial implications on loan repayment ability from both the potential costs of the conservation system and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the

financial implications of compliance with a conservation system using the financial projection method(s) indicated in subparagraph c (2)(c)(i) of this paragraph. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form 1940-1, "Request for Obligation of Funds," and using Form Letter 1940-G-1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940-G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to January 1, 1995, and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance.

(d) Implement the actions in subparagraph e of this paragraph if the applicant plans to repay a portion of the loan with funds from a USDA financial assistance program subject to wetland or highly erodible land conservation restrictions.

d. *Highly erodible land present that was or is planted in alfalfa.* If the applicant plans to cultivate highly erodible land for the purpose of producing an agricultural commodity and that highly erodible land during each of the 1981 to 1985 crop years was planted in alfalfa in a crop rotation determined by SCS to be adequate for the protection of highly erodible land, the applicant is exempt until June 1, 1988, from the requirement to fully implement an approved conservation system on the highly erodible land. The County Supervisor, following procedures similar to those indicated in subparagraph c (2)(c)(i) of this paragraph, will determine if it is financially feasible for the applicant to apply a conservation system to the highly erodible land prior to the loss of the exemption on June 1, 1988. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to June 1, 1988 and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance with this requirement.

e. *Highly erodible land, wetland, or converted wetland present and applicant intends to use the USDA financial assistance program(s), including crop insurance, to repay FmHA or its successor agency under Public Law 103-354 loan.* The County Supervisor will consult with the applicant (and lender, in the case of

a guaranteed loan) and the other USDA agency(s) to determine if the applicant is eligible for the latter's financial assistance. If not eligible, the applicant will have to demonstrate that an alternative source(s) of repayment will be available in order for further processing of the application to proceed.

7. *Required provisions in loan approval documents.*

a. *Insured loans.*

(1) *Promissory Notes.* For all loans to which this exhibit applies, all promissory notes must contain the provision indicated below: (Form FmHA or its successor agency under Public Law 103-354 1940-17, "Promissory Note," has been revised so that the language will no longer be inserted as an addendum, but the following provision must be inserted as an addendum to Form FmHA or its successor agency under Public Law 103-354 440-22, "Promissory Note (Association or Organization)," if the loan is being made to an Indian Tribe or a Tribal Corporation.)

"ADDENDUM FOR HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION"

Addendum to promissory note dated _____ in the amount of \$ _____ at an annual interest rate of _____ percent. This agreement supplements and attaches to the above note.

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M. If (1) the term of the loan exceeds January 1, 1990, but not January 1, 1995, and (2) Borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of exhibit M until either January 1, 1990 or two years after the U.S. Soil Conservation Service (SCS) has completed a soil survey for the Borrower's land, whichever is later, the Borrower further agrees that, prior to the loss of the exemption from the highly erodible land conservation restrictions found in 7 CFR part 12, Borrower must demonstrate that Borrower is actively applying on that land which has been determined to be highly erodible a conservation plan approved by the SCS or the appropriate conservation district in accordance with SCS's requirements. Furthermore, if the term of the loan exceeds January 1, 1995, Borrower further agrees that Borrower must demonstrate prior to January 1, 1995, that any production after that date of an agricultural commodity on highly erodible land will be done in compliance with a conservation system approved by SCS or the appropriate conservation district in accordance with SCS's requirements.

(Name of Borrower)

(Signature of Executive Official)

(Signature of Attesting Official)

(2) *Mortgages, deeds of trust and security agreements.* State Directors will consult with the Office of General Counsel and ensure that for all loans to which this exhibit applies a covenant is included in all mortgages, deeds of trust, and security agreements which reads as indicated below. Form FmHA or its successor agency under Public Law 103-354 440-15, "Security Agreement (Insured Loans to Individuals)," and Form FmHA or its successor agency under Public Law 103-354 440-4, "Security Agreement (Chattels and Crops)," have been revised accordingly. Equivalent forms required in State supplements must be similarly revised.

[FOR MORTGAGES OR DEEDS OF TRUST:]

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M."

[FOR SECURITY AGREEMENTS:]

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M."

b. *Guaranteed loans.*

(1) *Form FmHA or its successor agency under Public Law 103-354 449-14, "Conditional Commitment for Guarantee," and Form FmHA or its successor agency under Public Law 103-354 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)."* These forms must contain a condition that includes the following provisions:

(a) Informs the lender that FmHA or its successor agency under Public Law 103-354's commitment is conditioned upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained in this exhibit;

(b) Informs the lender of the lender's monitoring responsibilities under paragraph 10 of this exhibit; and;

(c) Requires the lender, for all borrowers having highly erodible land, wetland, or converted on their farm properties, to include provisions in its loan instruments similar to those contained in subparagraphs a (1) and (2) of this paragraph.

(2) *Lender's loan and security instruments.* These instruments must be modified as spec-

ified in subparagraph b(1)(c) of this paragraph.

8. *Required FmHA or its successor agency under Public Law 103-354 documentation.* The actions taken and determinations made by FmHA or its successor agency under Public Law 103-354 to comply with the provisions of this exhibit will be documented as part of the environmental review of the application. All actions subject to this exhibit will undergo at a minimum the completion of Form FmHA or its successor agency under Public Law 103-354 1940-22, "Environmental Checklist for Categorical Exclusions." On the reverse of this form, the preparer will document as applicable (a) whether or not highly erodible land, wetland, or converted wetland is present, (b) if any exemption(s) applies, (c) the status of the applicant's eligibility for an FmHA or its successor agency under Public Law 103-354 loan under this exhibit, and (d) any steps the applicant must take prior to loan approval to retain or regain its eligibility. If the application under review meets the definition of a Class I action as defined in §1940.311 of this subpart, the above documentation will be included as an exhibit to Form FmHA or its successor agency under Public Law 103-354 1940-21, "Environmental Assessment for Class I Action." If the application meets the definition of a Class II action as defined in §1940.312 of this subpart, the required documentation will be included within the Class II assessment under the discussion of land use impacts. See paragraph IV.4. of exhibit H of this subpart. Once an applicant's farm property has undergone an environmental review covering the provisions of this exhibit, the County Supervisor reviewing a subsequent loan request need not require the applicant to obtain further site information from SCS as long as there is no change in the farm property to be affected or any applicable exemptions.

9. *Borrowers' responsibilities.* In addition to complying with any loan requirements resulting from FmHA or its successor agency under Public Law 103-354's implementation of this exhibit, a borrower must within ten days of receipt inform, in writing, the lender of a guaranteed loan and the County Supervisor for an insured loan of any ineligibility determinations received from other USDA agencies for violations of wetland or highly erodible land conservation restrictions. A borrower also has the responsibility to consult with the lender or County Supervisor, as applicable, if at any time the borrower is uncertain as to the borrower's duties and responsibility under the loan provisions.

10. *FmHA or its successor agency under Public Law 103-354 and lender monitoring.* As an element of insured loan servicing, to include development of a farm plan of operation for an upcoming crop year, scheduled farm visits, or other contracts with borrowers, FmHA or its successor agency under Public Law 103-

354 staff will review and analyze the borrower's compliance with the provisions of this exhibit and any related loan requirements. If at anytime FmHA or its successor agency under Public Law 103-354 becomes aware of the borrower's violation of these provisions or related loan requirements, the borrower will be informed that the affected loan(s) is in default. In addition to directly monitoring borrowers, the County Supervisor will receive and review the monitoring results of other USDA agencies having restrictions on wetland and highly erodible land conservation. Whenever these results indicate that a borrower may have violated the loan conditions, the County Supervisor will further analyze the matter and respond, as indicated in this paragraph, should a violation be determined. Lenders of FmHA or its successor agency under Public Law 103-354 guaranteed loans must also monitor compliance as part of their servicing responsibilities.

11. *Exemptions and determining their applicability.* Following is a list of exemptions from the provisions of this exhibit as well a description of how FmHA or its successor agency under Public Law 103-354 will apply the exemptions to a proposed loan or activity under a loan. This list is intended to provide guidance on implementing the exemptions contained in subparts A, B, and C of part 12 of subtitle A of title 7 (attachment 1 of this exhibit which is available in any FmHA or its successor agency under Public Law 103-354 office) and does not modify or limit any of those exemptions.

a. *Exemption from wetland and highly erodible land conservation.* Any loan which was closed prior to December 23, 1985, or any loan for which either Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request for Obligation of Funds," Form FmHA or its successor agency under Public Law 103-354 449-14, "Conditional Commitment for Guarantee," or Form FmHA or its successor agency under Public Law 103-354 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," was executed prior to December 23, 1985, is exempt from the provisions of this exhibit.

b. *Exemptions from highly erodible land conservation.* The following exemptions exist from the restrictions on highly erodible land conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA or its successor agency under Public Law 103-354 review.

(1) Any land upon which an agricultural commodity was planted before December 23, 1985, is exempt for that particular planting.

The County Supervisor will consult with the appropriate local ASCS office in applying this exemption and the ASCS determination is controlling for purposes of this exhibit.

(2) Any land planted with an agricultural commodity during a crop year beginning before December 23, 1985, is exempt for that particular planting. FmHA or its successor agency under Public Law 103-354 will consult with the ASCS State Executive Director and the latter's position will be controlling in determining the date that the crop year began.

(3) Any land that during any one of the crop years of 1981 through 1985 was either (a) cultivated to produce an agricultural commodity, or (b) set aside, diverted or otherwise not cropped under a program administered by USDA to reduce production of an agricultural commodity, is exempt until the later of January 1, 1990, or the date that is two years after the date that the SCS has completed a soil survey of the land. To apply this exemption, the County Supervisor will consult with ASCS to determine from the latter's records whether or not the land was cultivated or set aside during the required period. The ASCS determination will be controlling. However, the date of completion for any SCS soil survey will be determined by SCS and used by the County Supervisor.

(4) Beginning on January 1, 1990, or two years after SCS has completed a soil survey for the land, whichever is later, and extending to January 1, 1995, any land that qualified for the exemption in subparagraph b (3) of this paragraph is further exempt if a person is actively applying to it a conservation plan that is based on the local SCS technical guide and properly approved by the appropriate SCS conservation district or the SCS. To apply this exemption as well as the exemptions specified in subparagraphs b (5), (6), (7), and (8) of this paragraph, the County Supervisor will consult with the appropriate local SCS office and the SCS position will be controlling.

(5) Highly erodible land within a conservation district and under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the SCS technical guide for such district is exempt.

(6) Highly erodible land not within a conservation district but under a conservation system determined by SCS to be adequate for the production of a specific agricultural commodity or commodities on any highly erodible land is exempt for the production of that commodity or commodities.

(7) Highly erodible land that is planted in reliance on a SCS determination that such land was not highly erodible is exempt. The exemption is lost, however, for any agricultural commodity planted after SCS determines that such land is highly erodible land.

(8) Highly erodible land planted or to be planted in an agricultural commodity that was planted in alfalfa during each of the 1981 and 1985 crop years in a crop rotation determined by SCS to be adequate for the protection of highly erodible land is exempt until June 1, 1988, from the requirement that the highly erodible land be planted in compliance with an approved conservation system.

c. *Exemptions from wetland conservation.* The following exemptions exist from the restrictions on wetland conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA or its successor agency under Public Law 103-354 review.

(1) A converted wetland is exempt if the conversion of such wetland was completed or commenced before December 23, 1985. The County Supervisor will consult with ASCS whose determination as to when conversion of a wetland commenced will be final for FmHA or its successor agency under Public Law 103-354 purposes. Additionally, the County Supervisor will request evidence of ASCS's consultation with the U.S. Fish and Wildlife Service on each commenced determination reached for an FmHA or its successor agency under Public Law 103-354 applicant or borrower. SCS will determine if a wetland is a converted wetland using the criteria contained in §12.32 of subpart C of part 12 of subtitle A of title 7 (attachment 1 of this exhibit which is available in any FmHA or its successor agency under Public Law 103-354 office). Under these criteria, however, a converted wetland determined to be exempt may not always remain exempt. The criteria include the provision that if crop production is abandoned on a converted wetland and the land again meets the wetland criteria, that land has reverted to a wetland and is no longer exempt. For purposes of FmHA or its successor agency under Public Law 103-354 inventory farm properties, crop production will be considered to have been abandoned on a converted wetland either at the earlier of the time the former owner so abandoned crop production or at the time FmHA or its successor agency under Public Law 103-354 caused crop production to be abandoned after the property came into FmHA or its successor agency under Public Law 103-354's inventory. While in its inventory FmHA or its successor agency under Public Law 103-354 will not lease the converted wetland for the purpose of producing an agricultural commodity. Whether or not the wetland criteria are met on the abandoned land will be determined by SCS immediately before FmHA or its successor agency

under Public Law 103-354's lease or sale of the property.

(2) The following are not considered to be a wetland under the provisions of this exhibit: (a) An artificial lake, pond, or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, colling, rice production, or flood control; (b) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation and (c) lands in Alaska identified by SCS as having a predominance of permafrost soils. The County Supervisor will consult with SCS regarding the application of this exemption as well as the remaining exemptions in this paragraph and the SCS position will be controlling.

(3) A wetland is exempt if the production of an agricultural commodity is possible (a) as a result of a natural condition, such as drought, and (b) without action by the producer that destroys a natural wetland characteristic. This exemption is lost whenever condition (a) or (b) no longer exists.

(4) Production of an agricultural commodity on a converted wetland is exempt if SCS determines that the effect of such action, individually and in connection with all other similar actions authorized in the area by USDA agencies, on the hydrological and biological aspect of wetland is minimal.

12. *Appeals.* Any applicant or borrower that is directly and adversely affected by an administrative decision made by FmHA or its successor agency under Public Law 103-354 under this exhibit may appeal that decision under the provisions of subpart B of part 1900 of this chapter (see especially §1900.55).

13. *Working with other USDA agencies.*

a. *Coordination.* FmHA or its successor agency under Public Law 103-354 State Directors will consult with SCS State Conservationists and ASCS State Executive Directors to assess and coordinate loan processing workloads in order to minimize delays in responding to FmHA or its successor agency under Public Law 103-354 requests for site information or for the application of the exemptions contained in paragraph 11 of this exhibit. State Directors will ensure that FmHA or its successor agency under Public Law 103-354 field staff understand and can use the ASCS farm records system and will request ASCS training as needed. Also, management systems for sharing the information discussed in subparagraph b of this paragraph will be established.

b. *Information exchange.* FmHA or its successor agency under Public Law 103-354 State Directors will develop with ASCS State Executive Directors a system for FmHA or its successor agency under Public Law 103-354 to routinely receive notification whenever a violation has occurred under ASCS's wetland

§ 1940.401

and highly erodible land conservation restrictions. FmHA or its successor agency under Public Law 103-354 State Directors will in turn provide to any interested USDA agency the following information:

(1) Upon request, copies of site information or exemption decision made by SCS for FmHA or its successor agency under Public Law 103-354 application reviews;

(2) Upon request, copies of exemption decisions made by FmHA or its successor agency under Public Law 103-354; and

(3) Notice of any violations of the provisions of this exhibit identified by FmHA or its successor agency under Public Law 103-354 as a result of the monitoring activities identified in paragraph 10 of this exhibit.

14. *Relationship of the requirements of this exhibit to the wetland protection requirements of exhibit C of this subpart.* The provisions of this exhibit determine (a) whether or not an applicant for a Farmer Program insured or guaranteed loan or a loan to an Indian Tribe or Tribal Corporation is eligible to be considered for such a loan, and (b) whether or not a recipient of such a loan is properly using the loan proceeds with respect to the requirements of this exhibit. On the other hand, the requirements in exhibit C of this subpart regarding wetland protection cover all FmHA or its successor agency under Public Law 103-354 loan and grant programs and address not questions of eligibility but the potential environmental impacts of a proposed action on a wetland and alternatives to the action. Consequently, those applications covered by this exhibit and which may be approved under this exhibit must also meet the requirements of exhibit C of this subpart. For example, an application covered by this exhibit (M) that proposed to convert a wetland into a tree farm would be exempt from this exhibit (M) because trees are not an agricultural commodity, *i.e.*, there is no conversion in order to produce an agricultural commodity. However, before FmHA or its successor agency under Public Law 103-354 could make the loan, the requirements of exhibit C of this subpart would have to be met to include an FmHA or its successor agency under Public Law 103-354 finding that no practicable alternative exists to the conversion of the wetland. In summary, any proposed wetland conversion that is not prohibited by this exhibit (M) must next meet the requirements of exhibit C of this subpart before FmHA or its successor agency under Public Law 103-354 approval of the requested financial assistance could be provided.

[53 FR 7333, Mar. 8, 1988, as amended at 53 FR 14778, April 26, 1988]

Subpart H [Reserved]

7 CFR Ch. XVIII (1-1-09 Edition)

Subpart I—Truth in Lending—Real Estate Settlement Procedures

SOURCE: 48 FR 4, Jan. 3, 1983, unless otherwise noted.

§ 1940.401 Truth in lending.

(a) *General.* This section provides instructions for compliance with the Truth in Lending Act, as implemented by Regulation Z of the Federal Reserve System, to assure that individual Rural Housing (RH) applicants are informed of:

- (1) The cost and terms of credit, and
- (2) Their right to cancel certain credit transactions resulting in a lien or mortgage on their home.

(b) *Scope.* This section applies to all individuals who apply for loans, assumptions, or credit sales (hereafter described as transactions) for household purposes.

(1) Special rules for the right to cancel transactions not for purchase, acquisition or initial construction of a home broaden the scope of this section to include individuals who have an ownership interest in, and reside in as a principal dwelling, property which will be security for a mortgage, even though they may not execute the promissory note or assumption agreement. Such persons have the right to receive credit disclosures and the notice of the right to cancel and may cancel the transaction.

(2) This section does *not* apply to:

(i) Applicants who are corporations, associations, cooperatives, public bodies, partnerships, or other organizations;

(ii) Individual applicants for multiple family housing transactions (rural rental or labor housing), unless for a two-family dwelling in which the applicants will reside, and other business and commercial type loans; or

(iii) Applicants involved in credit transactions primarily for agricultural purposes.

(c) *Disclosure of the cost and terms of credit—(1) Form and content.* Form FmHA or its successor agency under Public Law 103-354 1940-41, "Truth in Lending Disclosure Statement," will be used to provide the following required disclosures:

- (i) Annual percentage rate;

- (ii) Finance charge;
- (iii) Amount financed;
- (iv) Total of payments;
- (v) Total sale price (required for credit sales only);
- (vi) Payment schedule;
- (vii) A separate itemization of the amount financed, if the applicant requests it. Normally this required disclosure will have been met in transactions subject to the Real Estate Settlement Procedures Act (RESPA) by providing the applicant with Form FmHA or its successor agency under Public Law 103-354 440-58, "Estimate of Settlement Costs";
- (viii) The lender's identity;
- (ix) Prepayment or late payment penalties;
- (x) Security interest;
- (xi) Insurance requirements;
- (xii) Assumption policy; and
- (xiii) Referral to other loan documents.

(2) *Timing, use of estimates and required redisclosure.* (i) In transactions for the purchase or construction of a home subject to RESPA, Form FmHA or its successor agency under Public Law 103-354 1940-41, completed using "good faith" estimates based on the best information available, will be delivered or placed in the mail to the applicant no later than three (3) business days after receipt of a written application in the County Office.

(ii) In transactions *not* subject to RESPA, such as RH Section 502 transactions for repairs or refinancing or RH Section 504 transactions, Form FmHA or its successor agency under Public Law 103-354 1940-41, completed using the actual terms of the transaction, will be delivered to each applicant (and in transactions which are subject to cancellation, each non-applicant with the right to cancel) at the time of loan approval.

(iii) In the event of a change in rates and terms between the time of initial disclosure and closing, whereby the annual percentage rate varies by more than one-eighth of one percent, redisclosure must be made. This may be done by entering the changes on all copies of the initial Form FmHA or its successor agency under Public Law 103-354 1940-41, or by preparing a new Form FmHA or its successor agency under

Public Law 103-354 1940-41. When required, redisclosure may be made at the time the transaction is approved or at the time of the change, but the form must be delivered to the applicant before the signing of the promissory note or assumption agreement.

(3) *Special instructions for assumption, reamortization, refinancing and multiple transactions.* (i) Assumptions, within the scope of paragraph (b) of this section, at new rates and terms or of existing obligations which were for purchase, acquisition or initial construction of a residence, require new credit disclosure before the assumption occurs. Since assumptions are not subject to RESPA, early disclosure is not required.

(ii) Reamortization, as described in 7 CFR part 3550, when the borrower is in default or delinquent, does not require new credit disclosure. In all other cases reamortization requires new credit disclosure.

(iii) Refinancing of debts in accordance with 7 CFR part 3550, though not subject to RESPA or early disclosure, does require credit disclosure at the time the transaction is approved.

(iv) Multiple transactions.

(A) When a subsequent loan is financed along with another transaction and both transactions require credit disclosure, a separate Form FmHA or its successor agency under Public Law 103-354 1940-41 will be prepared for each transaction.

(B) Transactions with multiple advances will be treated as one transaction for the purpose of credit disclosure, in accordance with the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103-354 1940-41.

(d) *Notice of the right to cancel.* The right to cancel applies only to transactions within the scope of paragraph (b) of this section, which are *not* for purchase, acquisition or initial construction of *and* which result in a mortgage on an individual's principal residence, such as RH Section 502 transactions for refinancing, repairs or rehabilitation or RH Section 504 transactions.

(1) *Form and Content.* Form FmHA or its successor agency under Public Law

§ 1940.401

7 CFR Ch. XVIII (1-1-09 Edition)

103-354 1940-43, "Notice of Right to Cancel", will be used to notify individuals of their right to cancel those transactions, within the scope of paragraphs (b) and (d) of this section, which result in a mortgage on their principal residence *except* when the transaction is for its purchase or initial construction. This notice will identify the transaction and disclose the following:

(i) The acquisition of a security interest in the individual's principal residence.

(ii) The individual's right to cancel the transaction.

(iii) How to exercise the right to cancel the transaction, with a form for that purpose.

(iv) The effects of cancellation.

(v) The date the cancellation period expires.

(2) *Timing.* (i) Two copies of Form FmHA or its successor agency under Public Law 103-354 1940-43, and one copy of Form FmHA or its successor agency under Public Law 103-354 1940-41, in accordance with the FMI's, will be given to each individual entitled to cancel, not later than loan closing.

(ii) Any entitled individual may cancel the transaction until midnight of the third business day following whichever of the following events occurs last:

(A) The date the transaction is closed.

(B) The date Truth in Lending credit disclosures were made.

(C) The date notice of the right to cancel was received.

(3) *Disbursement of funds.* In a transaction subject to cancellation funds will not be disbursed, other than to a designated attorney or title insurance company preparatory to closing, until:

(i) Forms FmHA 1940-43 have been given to the appropriate individuals,

(ii) The three-day cancellation period has expired, and

(iii) The loan approval official is reasonably assured that the transaction has not been cancelled. This assurance may be obtained by:

(A) Waiting a reasonable period of time after the expiration of the cancellation period to allow for the delivery of a mailed notice, or

(B) Obtaining a written statement from each individual entitled to cancel that the right has not been exercised.

(iv) This delay in disbursing funds may be waived in cases of a bonafide personal financial emergency, which must be met within the cancellation period, when the individual submits a signed and dated statement describing the nature of the emergency and waiving the right to cancel. Such a statement must be signed by all individuals entitled to cancel.

(4) *Effects of cancellation.* (i) When an individual cancels a transaction, the mortgage securing the transaction becomes void and the borrower will not be liable for any amount, including any finance charge.

(ii) Within twenty (20) calendar days after receipt of a notice of cancellation the loan approval official will:

(A) Notify all interested parties of the cancellation;

(B) Return, and/or request the return of any money or property given to anyone in connection with the transaction; and

(C) Take the necessary action to terminate the mortgage.

(iii) Once evidence has been presented to the borrower that the mortgage has been terminated, the borrower must return any funds advanced by FmHA or its successor agency under Public Law 103-354 to the FmHA or its successor agency under Public Law 103-354 County Office or surrender any property at his/her residence within twenty (20) calendar days.

(e) *Advertisements.* An *advertisement* is defined as a commercial message in any medium that promotes, directly or indirectly, a credit transaction. Advertisements for credit sales of Government inventory property, within the scope of paragraph (b) of this section, are subject to the following requirements.

(1) If an advertisement states specific credit terms, it shall state only those terms that actually are or will be arranged or offered.

(2) If an advertisement states a rate of finance charge, it shall state the rate as an *annual percentage rate*, using that term.

(3) Terms requiring additional disclosures.

(i) If any of the following terms is set forth in an advertisement:

(A) The amount or percentage of any down payment,

(B) The number of payments or period of repayment,

(C) The amount of any payment, or

(D) The amount of any finance charge,

(ii) The advertisement must also state:

(A) The amount or percentage of down payment,

(B) The terms of repayment, and

(C) The *annual percentage rate*, using that term.

[48 FR 4, Jan. 3, 1983, as amended at 60 FR 55123, Oct. 27, 1995; 67 FR 78328, Dec. 24, 2002]

§§ 1940.402–1940.405 [Reserved]

§ 1940.406 Real estate settlement procedures.

(a) *General.* This section provides the instructions for compliance with the Real Estate Settlement Procedures Act (RESPA), as amended, and Regulation X of the Department of Housing and Urban Development.

(b) *Scope.* (1) This section applies to loans and credit sales, including Section 502 Rural Housing, 1–4 family Rural Rental Housing, 1–4 family Labor Housing, and Farm Ownership involving tracts of less than 25 acres, whether made to an individual, corporation, partnership, association or other entity, which meet the following requirements:

(i) The proceeds of the loan or the credit extended are used in whole or in part to finance the purchase and transfer of title of the property to be mortgaged by the borrower, and

(ii) The loan or credit sale is secured by a first lien covering real estate on which is located a structure designed principally for the occupancy of from 1–4 families, or on which a structure designed principally for the occupancy of from 1–4 families is to be constructed using proceeds of the loan.

(2) Exempt transactions include:

(i) Loans for repairs, improvements, or refinancing if the proceeds are not used to finance the purchase of the property.

(ii) Loans to finance the construction of a 1–4 family structure if the tract of

land is already owned by the applicant/borrower.

(iii) Assumptions or transfers.

(c) *Action required.* (1) The information booklet entitled “Settlement Costs” will either be given to the applicant at the time the completed application is received, or mailed to the applicant no later than three (3) business days after receipt of the application in the County Office.

(i) Form FmHA or its successor agency under Public Law 103–354 440–58, “Estimate of Settlement Costs,” is to be used to provide a “good faith” statement of estimated closing costs. Form FmHA or its successor agency under Public Law 103–354 440–58 will be completed by the County Supervisor and mailed or delivered to the applicant with the Settlement Costs booklet. Costs will vary between geographic areas; therefore, information supplied on this form must be based upon (A) the County Supervisor’s best estimate of charges the borrower will pay for each service in connection with the transaction, or (B) a range of charges at which such service is available to the borrower from all providers in the area.

(ii) Form FmHA or its successor agency under Public Law 103–354 440–58 does not replace Truth in Lending forms. Appropriate forms listed in § 1940.401 will be used for Truth in Lending purposes.

(2) Form FmHA or its successor agency under Public Law 103–354 1940–59, “Settlement Statement,” will be completed as indicated in the form and FMI by the designated attorney or title company for all transactions described in paragraph (b) of this section. The purpose of this form is to provide a uniform settlement statement prescribed by RESPA.

(i) During the business day immediately preceding the date of settlement, the closing agent, if requested by the applicant, must permit the applicant to inspect the settlement statement, completed for those items which are then known to the closing agent.

(ii) A copy will be given to both the borrower and seller at the time of closing or settlement or will be mailed as soon as practicable if the borrower or seller are not present at closing.

Subparts J-K [Reserved]

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

SOURCE: 50 FR 24180, June 10, 1985, unless otherwise noted.

§ 1940.551 Purpose and general policy.

(a) The purpose of this subpart is to set forth the methodology and formulas by which the Administrator of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 allocates program funds to the States. (The term *State* means any of the States of the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Western Pacific Areas.) This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

(b) The formulas in this subpart are used to allocate program loan and grant funds to State Offices so that the overall mission of the Agency can be carried out. Considerations used when developing the formulas include enabling legislation, congressional direction, and administration policies. Allocation formulas ensure that program resources are available on an equal basis to all eligible individuals and organizations.

(c) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period are distributed to each State Office by an exhibit to this subpart. The exhibit is available for review in any FmHA or its successor agency under Public Law 103-354 State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State. FmHA or its successor agency under Public Law 103-354 will publish a Notice of Availability of Rural Housing funds in the FEDERAL REGISTER each year.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988; 55 FR 29560, July 20, 1990; 56 FR 66960, Dec. 27, 1991; 72 FR 64122, Nov. 15, 2007]

§ 1940.552 Definitions.

(a) *Amount available for allocation.* Funds appropriated or otherwise made available to the Agency for use in authorized programs. On occasion, the allocation of funds to States may not be practical for a particular program due to funding or administrative constraints. In these cases, funds will be controlled by the National Office.

(b) *Basic formula criteria, data source and weight.* Basic formulas are used to calculate a basic state factor as a part of the methodology for allocating funds to the States. The formulas take a number of criteria that reflect the funding needs for a particular program and through a normalization and weighting process for each of the criteria calculate the basic State Factor (SF). The data sources used for each criteria is believed to be the most current and reliable information that adequately quantifies the criterion. The weight, expressed as a percentage, gives a relative value to the importance of each of the criteria.

(c) *Basic formula allocation.* The result of multiplying the amount available for allocation less the total of any amounts held in reserve or distributed by base or administrative allocation times the basic State factor for each State. The basic formula allocation (BFA) for an individual State is equal to:

$$\text{BFA} = (\text{Amount available for allocation} - \text{NO reserve} - \text{Total base and administrative allocations}) \times \text{SF}$$

(d) *Transition formula.* A formula based on a proportional amount of previous year allocation used to maintain program continuity by preventing large fluctuations in individual State allocations. The transition formula limits allocation shifts to any particular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria. The transition formula first checks whether the current year's basic formula allocation is within the transition range (+ or - percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Maximum 20\%}}{100} \times \frac{\text{Amount available for allocation this year}}{\text{Amount available for allocation previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation. The transition range will not exceed 40% ($\pm 20\%$), but when a smaller range is used it will be stated in the individual program section.

(e) *Base allocation.* An amount that may be allocated to each State dependent upon the particular program to provide the opportunity for funding at least one typical loan or grant in each FmHA or its successor agency under Public Law 103-354 State, District, or County Office. The amount of the base allocation may be determined by criteria other than that used in the basic formula allocation such as agency historic data.

(f) *Administrative allocations.* Allocations made by the Administrator in cases where basic formula criteria information is not available. This form of allocation may be used when the Administrator determines the program objectives cannot be adequately met with a formula allocation.

(g) *Reserve.* An amount retained under the National Office control for each loan and grant program to provide flexibility in meeting situations of unexpected or justifiable need occurring during the fiscal year. The Administrator may make distributions from this reserve to any State when it determined necessary to meet a program need or agency objective. The Administrator may retain additional amounts

to fund authorized demonstration programs. When such demonstration programs exist, the information is outlined in exhibit A of this subpart (available in any FmFA State Office).

(h) *Pooling of funds.* A technique used to ensure that available funds are used in an effective, timely and efficient manner. At the time of pooling those funds within a State's allocation for the fiscal year or portion of the fiscal year, depending on the type of pooling, that have not been obligated by the State are placed in the National Office reserve. The Administrator will establish the pooling dates for each affected program.

(1) *Mid-year:* This pooling addresses the need to partially redistribute funds based on use/demand. Mid-year pooling occurs near the midpoint of the fiscal year.

(2) *Year-end:* This pooling is used to ensure maximum use of program funds on a national basis. Year-end pooling usually occurs near the first of August.

(3) *Emergency:* The Administrator may pool funds at any time that it is determined the conditions upon which the initial allocation was based have changed to such a degree that it is necessary to pool funds in order to efficiently carry out the Agency mission.

(i) *Availability of the allocation.* Program funds are made available to the Agency on a quarterly basis. In the high demand programs, it is necessary that specific instructions be given to the State Offices regarding the amount which is available for obligation during each quarter.

(j) *Suballocation by the State Director.* Dependent upon the individual program for which funds are being allocated, the State Director may be directed or given the option of suballocating the State allocation to District or County Offices. When suballocating

§§ 1940.553–1940.559

7 CFR Ch. XVIII (1–1–09 Edition)

the State Director may retain a portion of the funds in a State Office reserve to provide flexibility in situations of unexpected or justified need. When performing a suballocation the State Director will use the same formula, criteria and weights as used by the National Office.

(k) *Other documentation.* Additional instructions given to field offices regarding allocations.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§§ 1940.553–1940.559 [Reserved]

§ 1940.560 Guarantee Rural Rental Housing Program.

When funding levels are under \$100,000,000, all funds will be held in a National Office reserve and made available administratively in accordance with the Notice of Funding Availability (NOFA) and program regulations. When program levels are sufficient for a nationwide program, funds are allocated based upon the following criteria and weights.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

Each factor will receive a weight respectively of 40%, 40% and 20%. The criteria used in the basic formula are:

(1) State's percentage of National rural population,

(2) State's percentage of the National number of rural households between 50 and 115 percent of the area median income, and

(3) State's percentage of National average cost per unit. Data source for the first two of these criterion are based on the latest census data available. The third criterion is based on the cost per unit data using the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which can be obtained from the Department of Housing and Urban Development. The percentage representing each criterion is multiplied by the weight assigned and totaled to arrive at a State factor.

State Factor = (criterion No. 1 × weight of 40%)+ (criterion No. 1 × weight of

40%)+ (criterion No. 1 × weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c).

(d) *Transition formula.* See § 1940.552(d).

(e) *Base allocation.* See § 1940.552(e). Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f). Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.552(h).

(i) *Availability of the allocation.* See § 1940.552(i).

(j) *Suballocation by the State Director.* See § 1940.552(j).

(k) *Other documentation.* Not applicable.

[63 FR 39458, July 22, 1998]

§§ 1940.561–1940.562 [Reserved]

§ 1940.563 Section 502 non-subsidized guaranteed Rural Housing (RH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552 (b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households between 80 and 100 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 guaranteed RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Annually, the Administrator will advise State Director's whether or not suballocation within the State Office jurisdiction will be required for the guaranteed Housing program.

(k) *Other documentation.* Not applicable.

[56 FR 10509, Mar. 13, 1991]

§ 1940.564 Section 502 subsidized guaranteed Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households below 80 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 502 guaranteed RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administration allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Annually, the Administrator will advise State Director's whether or not suballocation within the State Office jurisdiction will be required for the guaranteed Housing program.

§ 1940.565

7 CFR Ch. XVIII (1-1-09 Edition)

(k) *Other documentation.* Not applicable.

[56 FR 10509, Mar. 13, 1991]

§ 1940.565 Section 502 subsidized Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population,

(3) State's percentage of the National rural population in places of less than 2,500 population,

(4) State's percentage of the National number of rural households between 50 and 80 percent of the area median income, and

(5) State's percentage of the National number of rural households below 50 percent of the area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF)

$$\text{SF} = (\text{criterion 1} \times \text{weight of 25\%}) + (\text{criterion 2} \times \text{weight of 10\%}) + (\text{criterion 3} \times \text{weight of 15\%}) + (\text{criterion 4} \times \text{weight of 30\%}) + (\text{criterion 5} \times \text{weight of 20\%})$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 subsidized RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565 (b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing delinquency).

(k) *Other documentation.* The percentage distribution of funds to the States by income levels is based on prevailing legislation.

§ 1940.566 Section 504 Housing Repair loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b). The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units, and

(2) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

RHS, RBS, RUS, FSA, USDA**§ 1940.567**

SF = (criterion No. 1 × weight of 50%)
+ (criterion No. 2 × weight of 50%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair Loans is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.567 Section 504 Housing Repair grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population 62 years and older, and

(3) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF = (criterion No. 1 × weight of 33⅓%)
+ (criterion No. 2 × weight of 33⅓%) +
(criterion No. 3 × weight of 33⅓%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair grants is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.568

§ 1940.568 Single Family Housing programs appropriations not allocated by State.

The following program funds are kept in a National Office reserve and are available as determined administratively:

- (a) Section 523 Self-Help Technical Assistance Grants.
- (b) Section 523 Land Development Fund.
- (c) Section 524 Rural Housing Site Loans.
- (d) Section 509 Compensation for Construction Defects.
- (e) Section 502 Nonsubsidized Funds.

§§ 1940.569–1940.574 [Reserved]

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

- (a) *Amount available for allocations.* See § 1940.552(a) of this subpart.
- (b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula area:

- (1) State's percentage of National rural population,
- (2) State's percentage of National number of rural occupied substandard units, and
- (3) State's percentage of National rural families with incomes below the poverty level.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

$$\text{SF} = (\text{criterion No. 1} \times \text{weight of } 33\frac{1}{3}\%) + (\text{criterion No. 2} \times \text{weight of } 33\frac{1}{3}\%) + (\text{criterion No. 3} \times \text{weight of } 33\frac{1}{3}\%)$$

- (c) *Basic formula allocation.* See § 1940.552(c) of this subpart.
- (d) *Transition formula.* See § 1940.522(d) of this subpart.
- (e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.
- (f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdic-

7 CFR Ch. XVIII (1–1–09 Edition)

tions receiving formula allocations do not receive administrative allocations.

- (g) *Reserve.* See § 1940.552(g) of this subpart.
- (h) *Pooling of funds.* See § 1940.552(h) of this subpart.
- (i) *Availability of the allocation.* See § 1940.552(i) of this subpart.
- (j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.
- (k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988]

§ 1940.576 Rental Assistance (RA) for new construction.

- (a) *Amount available for allocations.* See § 1940.552(a) of this subpart.
- (b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.
- (c) *Basic formula allocation.* See § 1940.552(c) of this subpart.
- (d) *Transition formula.* See § 1940.552(d) of this subpart.
- (e) *Base allocation.* See § 1940.552(e) of this subpart.
- (f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.
- (g) *Reserve.* See § 1940.552(g) of this subpart.
- (h) *Pooling of funds.* See § 1940.552(h) of this subpart.
- (i) *Availability of the allocation.* See § 1940.552(i) of this subpart.
- (j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.
- (k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988]

§ 1940.577 Rental Assistance (RA) for existing projects.

- (a) *Amount available for allocations.* See § 1940.552(a) of this subpart. RA appropriated for existing projects will first be used to replace contracts expiring each fiscal year and for the first few months of the following fiscal year. This is done to assure continued RA funding. RA units not needed for replacement purposes will be used for existing multiple family housing projects experiencing servicing problems.

RHS, RBS, RUS, FSA, USDA

§ 1940.579

(b) *Basic formula criteria, data source and weight.* No formula or weighted criteria is used to allocate replacement RA. The basic allocation for replacement RA will be made based on the following:

(1) *Criteria.* This allocation is based on the estimated need to replace RA contracts expiring from the depletion of funds.

(2) *Date source.* The most accurate and current information available from FmHA or its successor agency under Public Law 103-354 computerized data sources.

(c) *Basic formula allocation.* While no formula will be used, the basic allocation will be made to each State according to the need determined using the basic criteria.

(d) *Transition formula.* Not applicable.

(e) *Base allocation.* Not applicable.

(f) *Administrative allocation.* Not applicable.

(g) *Reserve.* See §1940.552(g) of this subpart. The National Office maintains a reserve adequate to compensate for the differences between actual and projected replacement activity. Units will be administratively distributed for existing housing to either satisfy previously unidentified replacement needs or address servicing situations. Units will be distributed to any State when the Administrator determines that additional allocations are necessary and appropriate.

(h) *Pooling of funds.* See §1940.552(h) of this subpart. Units will be pooled at the Administrator's discretion.

(i) *Obligation of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See §1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§ 1940.578 Housing Preservation Grant (HPG) program.

(a) *Amount available for allocations.* See §1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See §1940.575(b) of this subpart.

(c) *Basic formula allocation.* See §1940.552(c) of this subpart.

(d) *Transition formula.* See §1940.552(d) of this subpart.

(e) *Base allocation.* See §1940.552(e) of this subpart.

(f) *Administrative allocations.* See §1940.552(f) of this subpart.

(g) *Reserve.* See §1940.552(g) of this subpart.

(h) *Pooling of funds.* See §1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the Section 504 program.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, FmHA or its successor agency under Public Law 103-354 will announce opening and closing dates for receipt of HPG applications. After the closing date, FmHA or its successor agency under Public Law 103-354 will review and evaluate the proposals, adjust State allocations as necessary to comply with the law and program demand, and redistribute remaining unused HPG resources for use under Section 504 (as required by statute).

[53 FR 26229, July 12, 1988]

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

Funds are not allocated to States. The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

[64 FR 24480, May 6, 1999]

§§ 1940.580–1940.584

7 CFR Ch. XVIII (1–1–09 Edition)

§§ 1940.580–1940.584 [Reserved]

§ 1940.585 Community Facility loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$\text{SF} = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent ($\pm 15\%$).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by forwarding a completed copy of guide 26 of subpart A of part 1942 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[50 FR 24180, June 10, 1985, as amended at 58 FR 54485, Oct. 22, 1993]

§§ 1940.586–1940.587 [Reserved]

§ 1940.588 Business and Industry Guaranteed and Direct Loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$\text{SF} = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* The transition formula is not used for B&I Guaranteed and Direct Loans.

RHS, RBS, RUS, FSA, USDA

§ 1940.591

(e) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(g) *Reserve.* See § 1940.552(g). States may request reserve funds from the B&I reserve when all of the state allocation has been obligated or will be obligated to the project for which the request is made.

(h) *Pooling of funds.* See § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in a reserve and made available on a priority basis to all States.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. There is a 6-day waiting period from the time project funds are reserved to the time they are obligated.

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

[50 FR 24180, June 10, 1985, as amended at 58 FR 54486, Oct. 22, 1993; 68 FR 14528, Mar. 26, 2003]

§ 1940.589 Rural Business Enterprise Grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition equals 30 percent (±15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocation.* Not used.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions funds to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

[53 FR 26230, July 12, 1988, as amended at 57 FR 33099, July 27, 1992; 58 FR 54486, Oct. 22, 1993; 68 FR 14528, Mar. 26, 2003; 69 FR 5264, Feb. 4, 2004]

§ 1940.590 [Reserved]

§ 1940.591 Community Program Guaranteed loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion

§ 1940.592

is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$\text{SF} = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

(c) *Basic formula allocation.* See §1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Program Guaranteed loans is not used.

(e) *Base allocation.* See §1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See §1940.522(g) of this subpart. States may request funds by forwarding a request following the format found in guide 26 of subpart A of part 1942 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds from the State's allocation to obligate the loan requested.

(h) *Pooling of funds.* See §1940.522(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by State Director.* See §1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[55 FR 11134, Mar. 27, 1990, as amended at 58 FR 54486, Oct. 22, 1993]

7 CFR Ch. XVIII (1-1-09 Edition)

§ 1940.592 Community facilities grants.

(a) *Amount available for allocations.* See §1940.552(a).

(b) *Basic formula criteria, data source, and weight.* See §1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of National rural population—50 percent.

(ii) State's percentage of National rural population with income below the poverty level—50 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

$$\text{SF} = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 50 \text{ percent})$$

(c) *Basic formula allocation.* See §1940.552(c). States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Facilities Grants is not used.

(e) *Base allocation.* See §1940.552(e). States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See §1940.552(f). States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See §1940.552(g).

(h) *Pooling of funds.* See §1940.522(h). Funds will be pooled at midyear and yearend. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See §1940.552(i).

(j) *Suballocation by State Director.* See §1940.552(j).

(k) *Other documentation.* Not applicable.

[62 FR 16468, Apr. 7, 1997]

§ 1940.593 Rural Business Opportunity Grants.

(a) *Amount available for allocations.* See §1940.552(a).

(b) *Basic formula criteria, data source, and weight.* See §1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) The data source for each criterion is based on the latest census data available. The percentage representing each criterion is multiplied by the weight factor and added to arrive at a State Factor (SF). The SF cannot exceed .05.

$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$

(c) *Basic formula allocation.* See §1940.552(c).

(d) *Transition formula.* The transition formula is not used for Rural Business Opportunity Grants (RBOG).

(e) *Base allocation.* See §1940.552(e).

(f) *Administrative allocation.* The administrative allocation is not used for RBOG.

(g) *Reserve.* See §1940.552(g).

(h) *Pooling of funds.* See §1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See §1940.552(i). The allocation of funds is made available to States on an annual basis.

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

[68 FR 14528, Mar. 26, 2003; 68 FR 17153, Apr. 8, 2003]

§§ 1940.594–1940.600 [Reserved]

EXHIBIT A TO SUBPART L OF PART 1940 [RESERVED]

EXHIBIT B TO SUBPART L OF PART 1940— SECTION 515 NONPROFIT SET ASIDE (NPSA)

I. *Objective:* To provide eligible nonprofit entities with a reasonable opportunity to utilize section 515 funds.

II. *Background:* The Cranston-Gonzalez National Affordable Housing Act of 1990 estab-

lished the statutory authority for the section 515 NPSA funds.

III. *Eligible entities.* Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. An eligible entity may include a partnership, including a limited partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. For the purposes of this exhibit, a nonprofit entity is an organization that:

A. Will own an interest in a project to be financed under this section and will materially participate in the development and the operations of the project; and

B. Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986; and

C. Has among its purposes the planning, development, or management of low-income housing or community development projects; and

D. Is not affiliated with or controlled by a for-profit organization; and

E. May be a consumer cooperative, Indian tribe or tribal housing authority.

IV. *Nondiscrimination.* Rural Development reemphasizes the nondiscrimination in use and occupancy and location requirements of 7 CFR 3560.104.

V. *Amount of Set Aside.* See Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office):

A. *Small State Allocation Set Aside (SSASA).* The allocation for small States has been reserved and combined to form the SSASA, as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The definition of small State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

B. *Large State Allocation Set Aside (LSASA).* The allocation for large States has been reserved in the amounts shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The definition of large State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

C. *NPSA Rental Assistance (RA).* NPSA RA has been reserved in the National Office as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

VI. *Access to NPSA funds and RA.* RA is available and may be requested, as needed, with eligible loan requests. NPSA funds and

RA should be requested by the State Director using a format similar to Attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Funds are available as follows:

A. *SSASA*: The SSASA is available to any SSASA State on a first-come-first-served basis until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) for information regarding pooling.

B. *LSASA*: LSASA states may request LSASA funds up to the amount the state contributed to LSASA until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) for information regarding pooling.

VII. *General Information on priority/processing of Preapplications.*

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan making requirements of 7 CFR part 3560, subpart B.

B. A separate processing list will be maintained for NPSA loan requests.

C. The State Director may issue Form AD-622, "Notice of Preapplication Review Action", requesting a formal application to the highest ranking preapplication(s) from eligible nonprofit entities defined in paragraph III of this exhibit as follows:

1. *LSASA*. In LSASA States, AD-622s may not exceed 150 percent of the amount the State contributed to the LSASA. No single Form AD-622 may exceed the amount of funds the State contributed to LSASA.

2. *SSASA*. In SSASA States, AD-622s should not exceed the greater of \$750,000 or 150 percent of the amount the State contributed to the SSASA; except that the State Director in a SSASA State may request authorization to issue a Form AD-622, in an amount in excess of \$750,000 if additional funds are necessary to finance an average-size proposal based upon average construction costs in the state. For example, if the average size proposal currently being funded in the state is 24 units, and the average construction cost in the state is \$35,000 per unit, the state may request authorization to issue an AD-622 for \$840,000. The State Director will submit such requests to the National Office including data reflecting average size/cost projects in the State. No single Form AD-622 may exceed the amount of funds the State may receive from SSASA.

D. All AD-622s issued for proposals to be funded from NPSA will be subject to the availability of NPSA funds. Form AD-622 should contain the following or similar language: "This Form AD-622 is issued subject to the availability of Nonprofit Set-Aside (NPSA) funds."

E. If a preapplication requesting NPSA funds has sufficient priority points to com-

pete with non-NPSA loan requests based upon the District or State allocation (as applicable), the preapplication will be maintained on both the NPSA and non-NPSA rating/ranking lists.

F. Provisions for providing preference to loan requests from nonprofit organizations is contained in 7 CFR 3560.56. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

VIII. *Exception authority*. The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or Rural Rental Housing program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from NPSA, or restrict participation in the set aside.

[58 FR 38950, July 21, 1993, as amended at 69 FR 69104, Nov. 26, 2004]

EXHIBIT C TO SUBPART L OF PART 1940—
HOUSING IN UNDERSERVED AREAS

I. OBJECTIVE

A. To improve the quality of affordable housing by targeting funds under Rural Housing Targeting Set Aside (RHTSA) to designated areas that have extremely high concentrations of poverty and substandard housing and have severe, unmet rural housing needs.

B. To provide for the eligibility of certain colonias for rural housing funds.

II. BACKGROUND

The Cranston-Gonzalez National Affordable Housing Act of 1990 (herein referred to as the "Act") requires that Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 set aside section 502, 504, 514, 515, and 524 funds for assistance in targeted, underserved areas. An appropriate amount of section 521 new construction rental assistance (RA) is set aside for use with section 514 and 515 loan programs. Under the Act, certain colonias are now eligible for FmHA or its successor agency under Public Law 103-354 housing assistance.

III. COLONIAS

A. Colonia is defined as any identifiable community that:

1. Is in the State of Arizona, California, New Mexico or Texas;

2. Is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1 million;

3. Is designated by the State or county in which it is located as a colonia;

4. Is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

5. Was in existence and generally recognized as a colonia before November 28, 1990.

B. Requests for housing assistance in colonias have priority as follows:

1. When the State did not obligate its allocation in one or more of its housing programs during the previous 2 fiscal years (FYs), priority will be given to requests for assistance, in the affected program(s), from regularly allocated funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

2. When the State did obligate its allocation in one or more of its housing programs during the previous 2 FYs, priority will be given to requests for assistance, in the affected program(s), from RHTSA funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

C. Colonias may access pooled RHTSA funds as provided in paragraph IV G of this exhibit.

IV. RHTSA

A. *Amount of Set Aside.* Set asides for RHTSA, from the current FY allocations, are established in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

B. *Selection of Targeted Counties*—1. *Eligibility.* Eligible counties met the following criteria: (1) 20 percent or more of the county population is at, or below, poverty level; (2) 10 percent or more of the occupied housing units are substandard; and (3) the average funds received on a per capita basis in the county, during the previous 5 FYs, were more than 40 percent below the State per capita average during the same period. Data from the most recent available Census was used for all three criteria, with criteria (2) and (3) based on the FmHA or its successor

agency under Public Law 103-354 rural area definition.

2. *Selection.* The Act requires that 100 of the most underserved counties be initially targeted for RHTSA funds. In establishing the 100 counties, those with 28 percent or more of their population at, or below, poverty level and 13 percent or more of their occupied housing units substandard, have preference. If less than 100 counties meet this criteria, the remaining counties meeting the criteria in paragraph IV B 1 of this exhibit will be ranked, based upon a total of their substandard housing and poverty level percentages. The highest-ranking counties are then selected until the list reaches 100. The remaining counties are eligible for pool funds only.

C. *State RHTSA Levels.* In the section 502, 504, and 515 programs, each State's RHTSA level will be based on its number of eligible counties, with each county receiving a pro rata share of the total funds available. In order to ensure that a meaningful amount of assistance is available to each State, minimum funding levels may be established. When minimum levels are established, they are set forth on Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

D. *Use of Funds.* To maximize the assistance to targeted counties, allocated program funds should be used in addition to RHTSA funds, where possible. The State Director has the discretion to determine the most effective delivery of RHTSA funds among the targeted counties within his/her jurisdiction. The 100 counties listed in attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) are eligible for RHTSA funding consideration immediately. Colonias are also eligible for RHTSA funds as described in paragraph III of this exhibit.

E. *National Office RHTSA Reserve.* A limited National Office reserve is available on an individual case basis when the State is unable to fund a request from its regular or RHTSA allocation. The amount of the reserve, and the date it can be accessed and any conditions thereof, if applicable, are contained in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

F. *Requests for Funds and RA.* All RHTSA funds are reserved in the National Office and requests for these funds and/or RA units must be submitted by the State Director, using the applicable format shown on attachment 4 or 5 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The State Director is responsible for notifying the Director of Single Family Housing Processing Division (SFHPD) or Multi-Family Housing Processing Division (MFHPD) of any RHTSA

§ 1940.951

7 CFR Ch. XVIII (1-1-09 Edition)

funds and RA units authorized, but not obligated, by RHTSA pooling date.

G. *Pooling.* Unused RHTSA funds and RA will be pooled. Pooling dates and any pertinent information thereof are available on attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Pooled funds will be available on a first-come, first-served basis to all eligible colonias and all counties listed on attachments 2 and 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Pooled RHTSA funds will remain available until the year-end pooling date.

H.-I. [Reserved]

J. *Requests for Assistance.* Requests for assistance in targeted counties must meet all loan making requirements of the applicable program Instructions, except as modified for colonias in paragraph III of this exhibit. For section 515, States may:

1. Issue Form AD-622, "Notice of Preapplication Review Action," up to 150 percent of the amount shown in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

2. All AD-622s issued for applicants in targeted counties will be annotated, in Item 7, under "Other Remarks," with the following: "Issuance of this AD-622 is contingent upon receiving funds from the Rural Housing Targeting Set Aside (RHTSA). Should RHTSA funds be unavailable, or the county in which this project will be located is no longer considered a targeted county, this AD-622 will no longer be valid. In these cases, the request for assistance will need to compete with other preapplications in non-targeted counties, based upon its priority point score."

V. [RESERVED]

[57 FR 3924, Feb. 3, 1992]

Subparts M-S [Reserved]

Subpart T—System for Delivery of Certain Rural Development Programs

SOURCE: 57 FR 11559, Apr. 6, 1992, unless otherwise noted.

§ 1940.951 General.

This subpart sets forth Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 policies and procedures for the delivery of certain rural development programs under a rural economic development review panel established in

eligible States authorized under sections 365, 366, 367, and 368 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), as amended.

(a) If a State desires to participate in this pilot program, the Governor of the State may submit an application to the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, room 219-A, Administration Building, Washington, DC 20250 in accordance with §1940.954 of this subpart.

(b) The Under Secretary shall designate not more than five States in which to make rural economic development review panels applicable during any established time period for the purpose of reviewing and ranking applications submitted for funding under certain rural development programs. The following time periods have been established for participation in this pilot program:

- First period—Balance of fiscal year (FY) 1992 to September 30, 1993;
- Second period—October 1, 1993 to September 30, 1994;
- Third period—October 1, 1994 to September 30, 1995; and
- Fourth period—October 1, 1995 to September 30, 1996.

The State will be bound by the provisions of this pilot program only during the established time period(s) for which the State is designated. If a designated State does not remain an eligible State during the established time period(s) for which the State was designated, the State will not be eligible to participate in this program and cannot revert to the old ranking and applicant selection process.

(c) Assistance under each designated rural development program shall be provided to eligible designated States for qualified projects in accordance with this subpart.

(d) Federal statutes provide for extending FmHA or its successor agency under Public Law 103-354 financially supported programs without regard to race, color, religion, sex, national origin, marital status, age, familial status, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts.)

§ 1940.952 [Reserved]

§ 1940.953 Definitions.

For the purpose of this subpart:

Administrator. The Administrator of FmHA or its successor agency under Public Law 103-354.

Area plan. The long-range development plan developed for a local or regional area in a State.

Designated agency. An agency selected by the Governor of the State to provide the panel and the State Coordinator with support for the daily operation of the panel.

Designated rural development program. A program carried out under sections 304(b), 306(a), or subsections (a) through (f) and (h) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), as amended, or under section 1323 of the Food Security Act of 1985, for which funds are available at any time during the FY under such section, including, but not limited to, the following:

- (1) Water and Waste Disposal Insured or Guaranteed Loans;
- (2) Development Grants for Community Domestic Water and Waste Disposal Systems;
- (3) Technical Assistance and Training Grants;
- (4) Emergency Community Water Assistance Grants;
- (5) Community Facilities Insured and Guaranteed Loans;
- (6) Business and Industry Guaranteed Loans;
- (7) Industrial Development Grants;
- (8) Intermediary Relending Program;
- (9) Drought and Disaster Relief Guaranteed Loans;
- (10) Disaster Assistance for Rural Business Enterprises;
- (11) Nonprofit National Rural Development and Finance Corporations.

Designated State. A State selected by the Under Secretary, in accordance with §1940.954 of this subpart, to participate in this program.

Eligible State. With respect to a FY, a State that has been determined eligible in accordance with §1940.954 (e) of this subpart.

Nondesignated State. A State that has not been selected to participate in this pilot program.

Qualified project. Any project: (1) For which the designated agency has identified alternative Federal, State, local or private sources of assistance and has identified related activities in the State; and

(2) To which the Administrator is required to provide assistance.

State. Any of the fifty States.

State coordinator. The officer or employee of the State appointed by the Governor to carry out the activities described in §1940.957 of this subpart.

State Director. The head of FmHA or its successor agency under Public Law 103-354 at the local level charged with administering designated rural development programs.

State rural economic development review panel or "panel". An advisory panel that meets the requirements of §1940.956 of this subpart.

Under Secretary. In the U.S. Department of Agriculture, the Under Secretary for Small Community and Rural Development.

§ 1940.954 State participation.

(a) *Application.* If a State desires to participate in this pilot program, the Governor may submit an original and one copy of Standard Form (SF) 424.1, "Application for Federal Assistance (For Non-construction)," to the Under Secretary. The five States designated by the Under Secretary to participate in the first established time period will be selected from among applications received not later than 60 calendar days from the effective date of this subpart. If a designated State desires to participate in additional time periods, applications are not required to be resubmitted; however, the Governor must notify the Under Secretary, in writing, no later than July 31 of each FY, and the State must submit evidence of eligibility requirements each FY in accordance with §1940.954 (e)(2) of this subpart. Beginning in FY 1993, applications must be submitted to the Under Secretary no later than July 31 if a State desires to be selected to fill vacancies that occur when designated States do not roll over into another established time period. States should include the following information with SF 424.1:

§ 1940.954

7 CFR Ch. XVIII (1-1-09 Edition)

(1) A narrative signed by the Governor including reasons for State participation in this program and reasons why a project review and ranking process by a State panel will improve the economic and social conditions of rural areas in the State. The narrative will also include the time period(s) for which the State wishes to participate.

(2) A proposal outlining the method for meeting all the following eligibility requirements and the timeframes established for meeting each requirement:

(i) Establishing a rural economic development review panel in accordance with §1940.956 of this subpart. When established, the name, title, and address of each proposed member should be included and the chairperson and vice chairperson should be identified.

(ii) Governor's proposed designation of a State agency to support the State coordinator and the panel. The name, address, and telephone number of the proposed agency's contact person should be included.

(iii) Governor's proposed selection of a State coordinator in accordance with §1940.957 of this subpart, including the title, address, and telephone number.

(iv) Development of area development plans for all areas of the State that are eligible to receive assistance from designated rural development programs.

(v) The review and evaluation of area development plans by the panel in accordance with §1940.956 of this subpart.

(vi) Development of written policy and criteria used by the panel to review and evaluate area plans in accordance with §1940.956 of this subpart.

(vii) Development of written policy and criteria the panel will use to evaluate and rank applications in accordance with §1940.956 of this subpart.

(3) Preparation of a proposed budget that includes 3 years projections of income and expenses associated with panel operations. If funds from other sources are anticipated, sources and amounts should be identified.

(4) Development of a financial management system that will provide for effective control and accountability of all funds and assets associated with the panel.

(5) A schedule to coordinate the submission, review, and ranking process of preapplications/applications in accordance with §1940.956(a) of this subpart.

(6) Other information provided by the State in support of its application.

(b) *Selecting States.* The Under Secretary will review the application and other information submitted by the State and designate not more than five States to participate during any established time period.

(c) *Notification of selection.* (1) The Under Secretary will notify the Governor of each State whether or not the State has been selected for further consideration in this program. If a State has been selected, the notification will include the additional information that the Governor must submit to the Under Secretary in order for the State to meet eligibility requirements in accordance with paragraph (d) of this section.

(2) A copy of the notification to the Governor will be submitted to the Administrator along with a copy of the State's application and other material submitted in support of the application.

(d) *Determining State eligibility.* (1) The Governor will provide the Under Secretary with evidence that the State has complied with the eligibility requirements of paragraph (a)(2) of this section not later than September 1, 1992, for the first established time period and not later than September 1 for each of the remaining established time periods.

(2) The Under Secretary will review the material submitted by the Governor in sufficient detail to determine if a State has complied with all eligibility requirements of this subpart. The panel will not begin reviewing and ranking applications until the Governor has been notified in writing by the Under Secretary that the State has been determined eligible and is designated to participate in this program. A copy of the notification will be sent to the Administrator. The Under Secretary's decision is not appealable.

(e) *Eligibility requirements.* (1) With respect to this subpart, the Under Secretary may determine a State to be an

RHS, RBS, RUS, FSA, USDA

§ 1940.956

eligible State provided all of the following apply not later than October 1 of each FY:

(i) The State has established a rural economic development review panel that meets the requirements of § 1940.956 of this subpart;

(ii) The Governor has appointed an officer or employee of the State government to serve as State coordinator to carry out the responsibilities set forth in § 1940.957 of this subpart; and

(iii) The Governor has designated an agency of the State government to provide the panel and State coordinator with support for the daily operation of the panel.

(2) If a State is determined eligible initially and desires to participate in additional time periods established for this program, the Governor will submit documents and information not later than September 1 of each subsequent FY in sufficient detail for the Under Secretary to determine, prior to the beginning of the additional time period, that the State is still in compliance with all eligibility requirements of this subpart.

§ 1940.955 Distribution of program funds to designated States.

(a) States selected to participate in the first established time period will receive funds from designated rural development programs according to applicable program regulations until the end of FY 1992, if necessary for States to have sufficient time to meet the eligibility requirements of this subpart, and to be designated to participate in this program. No funds will be administered under this subpart to an ineligible State.

(b) If a State becomes an eligible State any time prior to the end of FY 1992, any funds remaining unobligated from a State's FY 1992 allocation, may be administered under this subpart.

(c) Beginning in FY 1993 and for each established time period thereafter, all designated rural development program funds received by a designated State will be administered in accordance with §§ 1940.961 through 1940.965 of this subpart, provided the State is determined eligible prior to the beginning of each FY in accordance with § 1940.954 of this subpart. No assistance will be pro-

vided under any designated rural development program in any designated State that is not an eligible State.

§ 1940.956 State rural economic development review panel.

(a) *General.* In order for a State to become or remain an eligible State, the State must have a rural economic development panel that meets all requirements of this subpart. Each designated State will establish a schedule whereby the panel and FmHA or its successor agency under Public Law 103-354 will coordinate the submission, review, and ranking process of preapplications/applications. The schedule will be submitted to the Under Secretary for concurrence and should consider the following:

(1) Timeframes should assure that applications selected for funding from the current FY's allocation of funds can be processed by FmHA or its successor agency under Public Law 103-354 and funds obligated prior to the July 15 pooling established in § 1940.961(c) of this subpart;

(2) Initial submission of preapplications/applications from FmHA or its successor agency under Public Law 103-354 to the panel and any subsequent submissions during the first year;

(3) How often during each FY thereafter should FmHA or its successor agency under Public Law 103-354 submit preapplications/applications to the panel for review and ranking;

(4) Number of working days needed by the panel to review and rank preapplications/applications;

(5) Number of times during the FY the panel will submit a list of ranked preapplications/applications to FmHA or its successor agency under Public Law 103-354 for funding consideration;

(6) Consider the matching of available loan and grant funds to assure that all allocated funds will be used;

(7) How to consider ranked preapplications/applications at the end of the FY that have not been funded; and

(8) How to consider requests for additional funds needed by an applicant to complete a project that already has funds approved; *i.e.*, construction bid cost overrun.

(b) *Duties and responsibilities.* The panel is required to advise the State Director on the desirability of funding applications from funds available to the State from designated rural development programs. In relation to this advice, the panel will have the following duties and responsibilities:

(1) *Establish policy and criteria to review and evaluate area plans and to review and rank preapplications/applications.* (i) *Area plan.* The panel will develop a written policy and criteria to use when evaluating area plans. The criteria to be used when evaluating area plans will assure that the plan includes, as a minimum, the technical information included in §1940.959 of this subpart. The criteria will be in sufficient detail for the panel to determine that the plan is technically and economically adequate, feasible, and likely to succeed in meeting the stated goals of the plan. The panel will give weight to area-wide or regional plans and comments submitted by intergovernmental development councils or similar organizations made up of local elected officials charged with the responsibility for rural area or regional development. A copy of the policy and evaluating criteria will be provided to FmHA or its successor agency under Public Law 103-354.

(ii) *Applications.* The panel will annually review the policy and criteria used by the panel to evaluate and rank preapplications/applications in accordance with this subpart. The panel will assure that the policy and criteria are consistent with current rural development needs, and that the public has an opportunity to provide input during the development of the initial policy and criteria. The Governor will provide a copy of the initial policy and criteria established by the panel when submitting evidence of eligibility in accordance with §1940.954 of this subpart. Annually, thereafter, and not later than September 1 of each FY, the State coordinator will send the Under Secretary evidence that the panel has reviewed the established policy and criteria. The State coordinator will also send the Under Secretary a copy of all revisions.

(A) The policy and criteria used to rank applications for business related

projects will include the following, which are not necessarily in rank order:

(1) The extent to which a project stimulate rural development by creating new jobs of a permanent nature or retaining existing jobs by enabling new small businesses to be started, or existing businesses to be expanded by local or regional area residents who own and operate the businesses.

(2) The extent to which a project will contribute to the enhancement and the diversification of the local or regional area economy.

(3) The extent to which a project will generate or retain jobs for local or regional area residents.

(4) The extent to which a project will be carried out by persons with sufficient management capabilities.

(5) The extent to which a project is likely to become successful.

(6) The extent to which a project will assist a local or regional area overcome severe economic distress.

(7) The distribution of assistance to projects in as many areas as possible in the State with sensitivity to geographic distribution.

(8) The technical aspects of the project.

(9) The market potential and marketing arrangement for the projects.

(10) The potential of such project to promote the growth of a rural community by improving the ability of the community to increase the number of persons residing in the community and by improving the quality of life for these persons.

(B) The policy and criteria used to rank preapplications/applications for infrastructure and all other community facility-type projects will include the following which are not necessarily in rank order:

(1) The extent to which the project will have the potential to promote the growth of a rural community by improving the quality of life for local or regional residents.

(2) The extent to which the project will affect the health and safety of local or regional area residents.

(3) The extent to which the project will improve or enhance cultural activities, public service, education, or transportation.

(4) The extent to which the project will affect business productivity and efficiency.

(5) The extent to which the project will enhance commercial business activity.

(6) The extent to which the project will address a severe loss or lack of water quality or quantity.

(7) The extent to which the project will correct a waste collection or disposal problem.

(8) The extent to which the project will bring a community into compliance with Federal or State water or waste water standards.

(9) The extent to which the project will consolidate water and waste systems and utilize management efficiencies in the new system.

(2) *Review and evaluate area plans.* Each area plan submitted for a local or regional area will be reviewed and evaluated by the panel. After an area plan has been reviewed and evaluated in accordance with established policy and criteria:

(i) The panel will accept any area plan that meets established criteria unless the plan is incompatible with any other area plan for that area that has been accepted by the panel; or

(ii) The panel will return any area plan that is technically or economically inadequate, not feasible, is unlikely to be successful, or is not compatible with other panel-accepted area plans for that area. When an area plan is returned, the panel will include an explanation of the reasons for the return and suggest alternative proposals.

(iii) The State coordinator will notify the State Director, in writing, of the panel's decision on each area plan reviewed.

(3) *Review and rank preapplications/applications.* The panel will review, rank, and transmit a ranked list of preapplications/applications according to the schedule prepared in accordance with paragraph (a) of this section, and the following:

(i) *Review preapplications/applications.* The panel will review each preapplication/application for assistance to determine if the project to be carried out is compatible with the area plan in which the project described in

the preapplication/application is proposed, and either:

(A) Accept any preapplication/application determined to be compatible with such area plan; or

(B) Return to the State Director any preapplication/application determined not to be compatible with such area plan. The panel will notify the applicant when preapplication/applications are returned to the State Director.

(ii) *Rank preapplications/applications.* The panel will rank only those preapplications/applications that have been accepted in accordance with paragraph (b)(3)(i)(A) of this section. The panel will consider the sources of assistance and related activities in the State identified by the designated agency. Applications will be ranked in accordance with the written policy and criteria established in accordance with paragraph (b)(1)(ii) of this section and the following:

(A) Priority ranking for projects addressing health emergencies. In addition to the criteria established in paragraph (b)(1)(ii) of this section, preapplications/applications for projects designed to address a health emergency declared so by the appropriate Federal or State agency, will be given priority by the panel.

(B) Priority based on need. If two or more preapplications/applications ranked in accordance with this subpart are determined to have comparable strengths in their feasibility and potential for growth, the panel will give priority to the applications for projects with the greatest need.

(C) If additional ranking criteria for use by a panel are required in any designated rural development program regulation, the panel will give consideration to the criteria when ranking preapplications/applications submitted under that program.

(iii) *Transmit list of ranked preapplications/applications.* After the preapplications/applications have been ranked, the panel will submit a list of all preapplications/applications received to the State coordinator. The list will clearly indicate each preapplication/application accepted for funding and will list preapplications/applications in the order established

for funding according to priority ranking by the panel. The list will not include a preapplication/application that is to be returned to the applicant in accordance with paragraph (b)(3)(i)(B) of this section. The State coordinator will send a copy of the list to the State Director for further processing of the preapplication/application in accordance with §1940.965 of this subpart. Once the panel has ranked and submitted the list to FmHA or its successor agency under Public Law 103-354 and the State Director has selected a preapplication/application for funding, the preapplication/application selected will not be replaced with a preapplication/application received at a later date that may have a higher ranking.

(4) *Public availability of list.* If requested, the State coordinator will make the list of ranked preapplications/applications available to the public and will include a brief explanation and justification of why the project preapplications/applications received their priority ranking.

(c) *Membership—(1) Voting members.* The panel will be composed of not more than 16 voting members who are representatives of rural areas. The 16 voting members will include the following:

(i) One of whom is the Governor of the State or the person designated by the Governor to serve on the panel, on behalf of the Governor, for that year;

(ii) One of whom is the director of the State agency responsible for economic and community development or the person designated by the director to serve on the panel, on behalf of the director, for that year;

(iii) One of whom is appointed by a statewide association of banking organizations;

(iv) One of whom is appointed by a statewide association of investor-owned utilities;

(v) One of whom is appointed by a statewide association of rural telephone cooperatives;

(vi) One of whom is appointed by a statewide association of noncooperative telephone companies;

(vii) One of whom is appointed by a statewide association of rural electric cooperatives;

(viii) One of whom is appointed by a statewide association of health care organizations;

(ix) One of whom is appointed by a statewide association of existing local government-based planning and development organizations;

(x) One of whom is appointed by the Governor of the State from either a statewide rural development organization or a statewide association of publicly-owned electric utilities, neither of which is described in any of paragraphs (c)(1)(iii) through (ix);

(xi) One of whom is appointed by a statewide association of counties;

(xii) One of whom is appointed by a statewide association of towns and townships, or by a statewide association of municipal leagues, as determined by the Governor;

(xiii) One of whom is appointed by a statewide association of rural water districts;

(xiv) The State director of the Federal small business development center or, if there is no small business development center in place with respect to the State, the director of the State office of the Small Business Administration;

(xv) The State representative of the Economic Development Administration of the Department of Commerce; and

(xvi) One of whom is appointed by the State Director from among the officers and employees of FmHA or its successor agency under Public Law 103-354.

(2) *Nonvoting members.* The panel will have not more than four nonvoting members who will serve in an advisory capacity and who are representatives of rural areas. The four nonvoting members will be appointed by the Governor and include:

(i) One from names submitted by the dean or the equivalent official of each school or college of business, from colleges and universities in the State;

(ii) One from names submitted by the dean or the equivalent official of each school or college of engineering, from colleges and universities in the State;

(iii) One from names submitted by the dean or the equivalent official, of each school or college of agriculture,

from colleges and universities in the State; and

(iv) The director of the State agency responsible for extension services in the State.

(3) *Qualifications of panel members appointed by the Governor.* Each individual appointed to the panel by the Governor will be specially qualified to serve on the panel by virtue of the individual's technical expertise in business and community development.

(4) *Notification of selection.* Each statewide organization that selects an individual to represent the organization on the panel must notify the Governor of the selection.

(5) *Appointment of members representative of statewide organization in certain cases.* (i) If there is no statewide association or organization of the entities described in paragraph (c)(1) of this section, the Governor of the State will appoint an individual to fill the position or positions, as the case may be, from among nominations submitted by local groups of such entities.

(ii) If a State has more than one of any of the statewide associations or organizations of the entities described in paragraph (c)(1) of this section, the Governor will select one of the like organizations to name a member to serve during no more than one established time period. Thereafter, the Governor will rotate selection from among the remaining like organizations to name a member.

(d) *Failure to appoint panel members.* The failure of the Governor, a Federal agency, or an association or organization described in paragraph (c) of this section, to appoint a member to the panel as required under this subpart, shall not prevent a State from being determined an eligible State.

(e) *Panel vacancies.* A vacancy on the panel will be filled in the manner in which the original appointment was made. Vacancies should be filled prior to the third panel meeting held after the vacancy occurred. The State coordinator will notify the State Director, in writing, when the vacancy is filled or if the vacancy will not be filled.

(f) *Chairperson and vice chairperson.* The panel will select two members of the panel who are not officers or employees of the United States to serve as

the chairperson and vice chairperson of the panel. The term shall be for 1 year.

(g) *Compensation to panel members—(1) Federal members.* Except as provided in § 1940.960 of this subpart, each member of the panel who is an officer or employee of the Federal Government may not receive any compensation or benefits by reason of service on the panel, in addition to that which is received for performance of such officer or employee's regular employment.

(2) *NonFederal members.* Each non-federal member may be compensated by the State and/or from grant funds established in § 1940.968 of this subpart.

(h) *Rules governing panel meetings—(1) Quorum.* A majority of voting members of the panel will constitute a quorum for the purpose of conducting business of the panel.

(2) *Frequency of meetings.* The panel will meet not less frequently than quarterly. Frequency of meetings should be often enough to assure that applications are reviewed and ranked for funding in a timely manner.

(3) *First meeting.* The State coordinator will schedule the first panel meeting and will notify all panel members of the location, date, and time at least seven days prior to the meeting. Subsequent meetings will be scheduled by vote of the panel.

(4) *Records of meetings.* The panel will keep records of the minutes of the meetings, deliberations, and evaluations of the panel in sufficient detail to enable the panel to provide interested agencies or persons the reasons for its actions.

(i) *Federal Advisory Committee Act.* The Federal Advisory Committee Act shall not apply to any State rural economic development review panel.

(j) *Liability of members.* The members of a State rural economic development review panel shall not be liable to any person with respect to any determination made by the panel.

§ 1940.957 State coordinator.

The Governor will appoint an officer or employee of State government as State coordinator in order for a State to become and remain an eligible State under this subpart. The State coordinator will have the following duties and responsibilities:

§ 1940.958

(a) Manage, operate, and carry out the instructions of the panel;

(b) Serve as liaison between the panel and the Federal and State agencies involved in rural development;

(c) Coordinate the efforts of interested rural residents with the panel and ensure that all rural residents in the State are informed about the manner in which assistance under designated rural development programs is provided to the State pursuant to this subpart, and if requested, provide information to State residents; and

(d) Coordinate panel activities with FmHA or its successor agency under Public Law 103-354.

§ 1940.958 Designated agency.

The Governor will appoint a State agency to provide the panel and the State coordinator with support for the daily operation of the panel. In addition to providing support, the designated agency is responsible for identifying:

(a) Alternative sources of financial assistance for project preapplications/applications reviewed and ranked by the panel, and

(b) Related activities within the State.

§ 1940.959 Area plan.

Each area plan submitted to the panel for review in accordance with § 1940.956 of this subpart shall identify the geographic boundaries of the area and shall include the following information:

(a) An overall development plan for the area with goals, including business development and infrastructure development goals, and time lines based on a realistic assessment of the area, including, but not limited to, the following:

(1) The number and types of businesses in the area that are growing or declining;

(2) A list of the types of businesses that the area could potentially support;

(3) The outstanding need for water and waste disposal and other public services or facilities in the area;

(4) The realistic possibilities for industrial recruitment in the area;

7 CFR Ch. XVIII (1-1-09 Edition)

(5) The potential for development of tourism in the area;

(6) The potential to generate employment in the area through creation of small businesses and the expansion of existing businesses; and

(7) The potential to produce value-added agricultural products in the area.

(b) An inventory and assessment of the human resources of the area, including, but not limited to, the following:

(1) A current list of organizations in the area and their special interests;

(2) The current level of participation of area residents in rural development activities and the level of participation required for successful implementation of the plan;

(3) The availability of general and specialized job training in the area and the extent to which the training needs of the area are not being met;

(4) A list of area residents with special skills which could be useful in developing and implementing the plan; and

(5) An analysis of the human needs of the area, the resources in the area available to meet those needs, and the manner in which the plan, if implemented, would increase the resources available to meet those needs.

(c) The current degree of intergovernmental cooperation in the area and the degree of such cooperation needed for the successful implementation of the plan.

(d) The ability and willingness of governments and citizens in the area to become involved in developing and implementing the plan.

(e) A description of how the governments in the area apply budget and fiscal control processes to the plan. This process is directed toward costs associated with carrying out the planned development. When plans are developed, the financial condition of all areas covered under the plan should be fully recognized and planned development should realistically reflect the area's immediate and long-range financial capabilities.

(f) The extent to which public services and facilities need to be improved to achieve the economic development and quality of life goals of the plan. At

RHS, RBS, RUS, FSA, USDA**§ 1940.961**

a minimum, the following items will be considered:

- (1) Law enforcement;
 - (2) Fire protection;
 - (3) Water, sewer, and solid waste management;
 - (4) Education;
 - (5) Health care;
 - (6) Transportation;
 - (7) Housing;
 - (8) Communications; and
 - (9) The availability of and capability to generate electric power.
- (g) Existing area or regional plans are acceptable provided the plan includes statements that indicate the degree to which the plan has met or is meeting all the requirements in paragraphs (a) through (f) of this section.

§ 1940.960 Federal employee panel members.

(a) The State Director will appoint one FmHA or its successor agency under Public Law 103-354 employee to serve as a voting member of the panel established in §1940.956(c)(1) of this subpart.

(b) The Administrator may appoint, temporarily and for specific purposes, personnel from any department or agency of the Federal Government as nonvoting panel members, with the consent of the head of such department or agency, to provide official information to the panel. The member(s) appointed shall have expertise to perform a duty described in §1940.956(b) of this subpart that is not available among panel members.

(c) Federal panel members will be paid per diem or otherwise reimbursed by the Federal Government for expenses incurred each day the employee is engaged in the actual performance of a duty of the panel. Reimbursement will be in accordance with Federal travel regulations.

§ 1940.961 Allocation of appropriated funds.

(a) *Initial allocations.* (1) Each FY, from sums appropriated for direct loans, loan guarantees, or grants for any designated rural development program, funds will be allocated to designated States in accordance with FmHA Instruction subpart L of part 1940, exhibit A, attachment 4, of this

chapter (available in any FmHA or its successor agency under Public Law 103-354 State or District Office).

(2) Each FY, and normally within 30 days after the date FmHA or its successor agency under Public Law 103-354 receives an appropriation of designated rural development program funds, the Governor of each designated State will be notified of the amounts allocated to the State under each designated program for such FY. The Governor will also be notified of the total amounts appropriated for the FY for each designated rural development program.

(3) The State Director will fund projects from a designated State's allocation of funds, according to appropriate program regulations giving great weight to the order in which the preapplications/applications for projects are ranked and listed by the panel in accordance with §1940.956(b)(3) of this subpart.

(b) *Reserve.* A percentage of the National Office reserve established in subpart L of part 1940 of this chapter will be used to establish a reserve for designated States that is separate and apart from that of nondesignated States. The percent reserved will be based upon the same criteria used in subpart L of part 1940 of this chapter to allocate program funds.

(c) *Pooling.* (1) On July 15 of each FY, and from time to time thereafter during the FY, as determined appropriate, unobligated funds will be pooled from among the designated States. Pooled funds will be made a part of the reserve established for designated States and will revert to National Office control.

(2) Funds pooled from designated States can be requested by designated States, pursuant to subsection (d) of this section. The designated States' pool; however, will not be available to nondesignated States until September 1 of each year.

(d) *Request for funds.* (1) Designated States may request designated States' reserve funds, and funds for other designated rural development programs controlled by the National Office, as shown in FmHA Instruction subpart L of part 1940, exhibit A, attachment 4, of this chapter, in accordance with applicable program regulations.

§ 1940.962

(2) Designated States may request funds from the nondesignated reserve account when:

(i) All allocated and reserve funds to designated states have been used, or

(ii) Sufficient funds do not remain in any designated State allocation and in the designated States' reserve account to fund a project.

§ 1940.962 Authority to transfer direct loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for direct Water and Waste Disposal or Community Facility loans for a FY are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.* (1) Amounts transferred within a designated State. The amount of direct loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(2) Amounts transferred on a National basis. The amount of direct loan funds transferred in a FY, among the designated States, from a program under this subpart (after accounting for any offsetting transfers into such program) shall not exceed \$9 million, or an amount otherwise authorized by law.

(c) *National Office concurrence.* The State Director may transfer direct loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.963 Authority to transfer guaranteed loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for guaranteed Water and Waste Disposal, Community Facility, or Business and Industry loans for a FY are not sufficient to provide the full amount requested for a project in accordance

7 CFR Ch. XVIII (1-1-09 Edition)

with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.* The amount of guaranteed loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(c) *National Office concurrence.* The State Director may transfer guaranteed loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.964 [Reserved]

§ 1940.965 Processing project preapplications/applications.

Except for the project review and ranking process established in this subpart, all requests for funds from designated rural development programs will be processed, closed, and serviced according to applicable FmHA or its successor agency under Public Law 103-354 regulations, available in any FmHA or its successor agency under Public Law 103-354 office.

(a) *Preapplications/applications.* All preapplications/applications on hand that have not been selected for further processing will be submitted initially to the panel for review and ranking. Preapplications/applications on hand that had been selected for further processing prior to the time a State was selected to participate in this program may be funded by FmHA or its successor agency under Public Law 103-354 without review by the panel. Preapplications/applications selected for further processing by FmHA or its successor agency under Public Law 103-354 will not exceed the State's previous year's funding level. The State Director will provide the State coordinator a list of preapplications/applications that are in process and will be considered for funding without review by the panel. This list will be provided at the same time preapplications/applications

are initially submitted to the State coordinator in accordance with paragraph (d) of this section.

(b) *FmHA or its successor agency under Public Law 103-354 review.* Preapplications/applications will be reviewed in sufficient detail to determine eligibility and, if applicable, determine if the applicant is able to obtain credit from other sources at reasonable rates and terms. Normally, within 45 days after receiving a complete preapplication/application, FmHA or its successor agency under Public Law 103-354 will notify the applicant of the eligibility determination. A copy of all notifications will be sent to the State coordinator.

(c) *Applicant notification.* The notification to eligible applicants will contain the following statements:

Your application has been submitted to the State coordinator for review and ranking by the State rural economic development review panel. If you have questions regarding this review process, you should contact the State coordinator. The address and telephone number are: (insert).

You will be notified at a later date of the decision reached by the panel and whether or not you can proceed with the proposed project.

You are advised against incurring obligations which cannot be fulfilled without FmHA or its successor agency under Public Law 103-354 funds.

These statements should be included in notifications to applicants with preapplications/applications on hand that had not been selected for further processing prior to the time a State was selected to participate in this program.

(d) *Information to State coordinator.* FmHA or its successor agency under Public Law 103-354 will forward a copy of the preapplication/application and other information received from the applicant to the State coordinator according to a schedule prepared in accordance with §1940.956(a) of this subpart. The State coordinator will be advised that no further action will be taken on preapplications/applications until they have been received and ranked by the panel, and a priority funding list has been received from the State. Applications forwarded to the State coordinator will be reviewed and

ranked for funding in accordance with §1940.956 of this subpart.

(e) *The FmHA or its successor agency under Public Law 103-354 review of priority funding list.* FmHA or its successor agency under Public Law 103-354 will review the list of ranked applications received from the State coordinator and determine if projects meet the requirements of the designated rural development program under which the applicant seeks assistance. Any project that does not meet program regulations will be removed from the list. Applicants will be notified of the decision reached by the panel and whether or not the applicant should proceed with the project. FmHA or its successor agency under Public Law 103-354 will provide a copy of all notifications to the State coordinator. The decisions of the panel are not appealable.

(f) *Obligation of funds.* FmHA or its successor agency under Public Law 103-354 will provide funds for projects whose application remains on the list, subject to available funds. Consideration will be given to the order in which the applications were ranked and prioritized by the panel. If FmHA or its successor agency under Public Law 103-354 proposes to provide assistance to any project without providing assistance to all projects ranked higher in priority by the panel than the project to be funded, 10 days prior to requesting an obligation of funds, the State Director will submit a report stating reasons for funding such lower ranked project to the following:

(1) *Panel.*

(2) *National Office.* The National Office will submit a copy of the notification to:

(i) Committee on Agriculture of the House of Representatives, Washington, DC.

(ii) Committee on Agriculture, Nutrition, and Forestry of the Senate, Washington, DC.

§§ 1940.966-1940.967 [Reserved]

§ 1940.968 Rural Economic Development Review Panel Grant (Panel Grant).

(a) *General.* Panel Grants awarded will be made from amounts appropriated for grants under any provision of section 306(a) of the CONACT (7

U.S.C 1926(a)), not to exceed \$100,000 annually to each eligible State. This section outlines FmHA or its successor agency under Public Law 103-354's policies and authorizations and sets forth procedures for making grants to designated States for administrative costs associated with a State rural economic development review panel.

(b) *Objective.* The objective of the Panel Grant program is to make grant funds available annually to each designated State to use for administrative costs associated with the State rural economic development review panels meeting requirements of §1940.956 of this subpart.

(c) *Authorities, delegations, and redelegations.* The State Director is responsible for implementing the authorities in this section and to issue State supplements redelegating these authorities to appropriate FmHA or its successor agency under Public Law 103-354 employees. Grant approval authorities are contained in subpart A of part 1901 of this chapter.

(d) *Joint funds.* FmHA or its successor agency under Public Law 103-354 grant funds may be used jointly with funds furnished by the grantee or grants from other sources.

(e) *Eligibility.* A State designated by the Under Secretary to participate in this program is eligible to receive not more than \$100,000 annually under this section. A State must become and remain an eligible State in order to receive funds under this section.

(f) *Purpose.* Panel Grant funds may be used to pay for reasonable administrative costs associated with the panel, including, but not limited to, the following:

- (1) Travel and lodging expenses;
- (2) Salaries for State coordinator and support staff;
- (3) Reasonable fees and charges for professional services necessary for establishing or organizing the panel. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations;
- (4) Office supplies, and
- (5) Other costs that may be necessary for panel operations.

(g) *Limitations.* Grant funds will not be used to:

(1) Pay costs incurred prior to the effective date of the grant authorized under this subpart;

(2) Recruit preapplications/applications for any designated rural development loan or grant program or any loan or grant program;

(3) Duplicate activities associated with normal execution of any panel member's occupation;

(4) Fund political activities;

(5) Pay costs associated with preparing area development plans;

(6) Pay for capital assets; purchase real estate, equipment or vehicles; rent, improve, or renovate office space; or repair and maintain State or privately owned property;

(7) Pay salaries to panel members; or

(8) Pay per diem or otherwise reimburse panel members unless distance traveled exceed 50 miles.

(h) *Other considerations*—(1) *Equal opportunity requirements.* Grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 as outlined in subpart E of part 1901 of this chapter.

(2) *Environmental requirements.* The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants made under this subpart.

(3) *Management assistance.* Grantees will be provided management assistance as necessary to assure that grant funds are used for eligible purposes for the successful operation of the panel. Grants made under this subpart will be administered under and are subject to the U.S. Department of Agriculture regulations, 7 CFR, parts 3016 and 3017, as appropriate.

(4) *Drug-free work place.* The State must provide for a drug-free workplace in accordance with the requirements of FmHA Instruction 1940-M (available in any FmHA or its successor agency under Public Law 103-354 office). Just prior to grant approval, the State must prepare and sign Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals."

(i) *Application processing.* (1) The State Director shall assist the State in application assembly and processing.

Processing requirements should be discussed during an application conference.

(2) After the Governor has been notified that the State has been designated to participate in this program and the State has met all eligibility requirements of this subpart, the State may file an original and one copy of SF 424.1 with the State Director. The following information will be included with the application:

(i) State's financial or in-kind resources, if applicable, that will maximize the use of Panel Grant funds;

(ii) Proposed budget. The financial budget that is part of SF 424.1 may be used, if sufficient, for all panel income and expense categories;

(iii) Estimated breakdown of costs, including costs to be funded by the grantee or from other sources;

(iv) Financial management system in place or proposed. The system will account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State must be sufficient to permit preparation of reports required by Federal regulations and permit the tracing of funds to a level of expenditures adequate to establish that grant funds are used solely for authorized purposes;

(v) Method to evaluate panel activities and determine if objectives are met;

(vi) Proposed Scope-of-Work detailing activities associated with the panel and time frames for completion of each task, and

(vii) Other information that may be needed by FmHA or its successor agency under Public Law 103-354 to make a grant award determination.

(3) The applicable provisions of §1942.5 of subpart A of part 1942 of this chapter relating to preparation of loan docket will be followed in preparing grant dockets. The docket will include at least the following:

(i) Form FmHA or its successor agency under Public Law 103-354 400-4, "Assurance Agreement;"

(ii) Scope-of-work prepared by the applicant and approved by FmHA or its successor agency under Public Law 103-354;

(iii) Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request for Obligation of Funds," with exhibit A, and

(iv) Certification regarding a drug-free workplace in accordance with FmHA Instruction 1940-M (available in any FmHA or its successor agency under Public Law 103-354 office).

(j) *Grant approval, obligation of funds, and grant closing.* (1) The State Director will review the application and other documents to determine whether the proposal complies with this subpart.

(2) Exhibit A (available from any FmHA or its successor agency under Public Law 103-354 State Office), shall be attached to and become a permanent part of Form FmHA or its successor agency under Public Law 103-354 1940-A and the following paragraphs will appear in the comment section of that form:

The Grantee understands the requirements for receipt of funds under the Panel Grant program. The Grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in FmHA or its successor agency under Public Law 103-354 7 CFR, part 1940, subpart T, and 7 CFR, parts 3016 and 3017, including revisions through _____ (date of grant approval). The Grantee further agrees to use grant funds for the purposes outlined in the Scope-of-Work approved by FmHA or its successor agency under Public Law 103-354. Exhibit A is incorporated as a part hereof.

(3) Grants will be approved and obligated in accordance with the applicable parts of §1942.5(d) of subpart A of part 1942 of this chapter.

(4) An executed copy of the Scope-of-Work will be sent to the State coordinator on the obligation date, along with a copy of Form FmHA or its successor agency under Public Law 103-354 1940-1 and the required exhibit. FmHA or its successor agency under Public Law 103-354 will retain the original of Form FmHA or its successor agency under Public Law 103-354 1940-1 and the exhibit.

(5) Grants will be closed in accordance with the applicable parts of subpart A of part 1942 of this chapter, including §1942.7. The grant is considered closed on the obligation date.

(6) A copy of Form FmHA or its successor agency under Public Law 103-354 1940-1, with the required exhibit, and the Scope-of-Work will be submitted to the National Office when funds are obligated.

(7) If the grant is not approved, the State coordinator will be notified in writing of the reason(s) for rejection. The notification will state that a review of the decision by FmHA or its successor agency under Public Law 103-354 may be requested by the State under subpart B of part 1900 of this chapter.

(k) *Fund disbursement.* Grant funds will be disbursed on a reimbursement basis. Requests for funds should not exceed one advance every 30 days. The financial management system of the State shall provide for effective control and accountability of all funds, property, and assets.

(1) SF 270, "Request for Advance or Reimbursement," will be completed by the State coordinator and submitted to the State Director not more frequently than monthly.

(2) Upon receipt of a properly completed SF 270, the State Director will request funds through the Automated Discrepancy Processing System. Ordinarily, payment will be made within 30 days after receipt of a properly prepared request for reimbursement.

(3) States are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprises, Department of Commerce, Washington, DC 20230.

(1) *Title.* Title to supplies acquired under this grant will vest, upon acquisition, in the State. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the grant awarded, and if the supplies are not needed for any other federally sponsored programs, the State shall compensate FmHA or its successor agency under Public Law 103-354 for its share.

(m) *Costs.* Costs incurred under this grant program are subject to cost prin-

ciples established in Office of Management and Budget Circular A-87.

(n) *Budget changes.* Rebudgeting within the approval direct cost categories to meet unanticipated requirements which do not exceed 10 percent of the current total approved budget shall be permitted. The State shall obtain prior approval from the State Director for any revisions which result in the need for additional funding.

(o) *Programmatic changes.* The State shall obtain prior written approval from the State Director for any change to the scope or objectives for which the grant was approved or for contracting out or otherwise obtaining services of a third party to perform activities which are central to the purposes of the grant. Failure to obtain prior approval of changes to the scope can result in suspension or termination of grant funds.

(p) *Financial reporting.* SF 269, "Financial Status Report," and a Project Performance Report are required on a quarterly basis. The reports will be submitted to the State Director not later than 30 days after the end of each quarter. A final SF 269 and Project Performance Report shall be due 90 days after the expiration or termination of grant support. The final report may serve as the last quarterly report. The State coordinator will constantly monitor performance to ensure that time schedules are met, projected work by time periods is accomplished, and other performance objectives are achieved. Program outlays and income will be reported on an accrual basis. Project Performance Reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will affect the ability to meet the objectives of the grant during established time periods. This disclosure must include a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(q) *Audit requirements.* Audit reports will be prepared and submitted in accordance with §1942.17(q)(4) of subpart A of part 1942 of this chapter. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards using publication, "Standards for Audits of Governmental Organizations, Programs, Activities and Functions."

(r) *Grant cancellation.* Grants which have been approved and funds obligated may be cancelled by the grant approval official in accordance with §1942.12 of subpart A of part 1942 of this chapter. The State Director will notify the State coordinator that the grant has been cancelled.

(s) *Grant servicing.* Grants will be serviced in accordance with subparts E and O of part 1951 of this chapter.

(t) *Subsequent grants.* Subsequent grants will be processed in accordance with the requirements of this subpart for each additional time period a State is designated to participate in this program.

§ 1940.969 Forms, exhibits, and subparts.

Forms, exhibits, and subparts of this chapter (all available in any FmHA or its successor agency under Public Law 103-354 office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

§ 1940.970 [Reserved]

§ 1940.971 Delegation of authority.

The authority authorized to the State Director in this subpart may be redelegated.

§§ 1940.972-1940.999 [Reserved]

§ 1940.1000 OMB control number.

The collection of information requirements contained in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575-0145. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response

with an average of 4 hours per response, including the 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, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 1941 [RESERVED]

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

- Sec.
- 1942.1 General.
 - 1942.2 Processing applications.
 - 1942.3 Preparation of appraisal reports.
 - 1942.4 Borrower contracts.
 - 1942.5 Application review and approval.
 - 1942.6 Preparation for loan closing.
 - 1942.7 Loan closing.
 - 1942.8 Actions subsequent to loan closing.
 - 1942.9 Planning, bidding, contracting, and constructing.
 - 1942.10-1942.11 [Reserved]
 - 1942.12 Loan cancellation.
 - 1942.13 Loan servicing.
 - 1942.14 Subsequent loans.
 - 1942.15 Delegation and redelegation of authority.
 - 1942.16 State supplements and guides.
 - 1942.17 Community facilities.
 - 1942.18 Community facilities—Planning, bidding, contracting, constructing.
 - 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.
 - 1942.20 Community Facility Guides.
 - 1942.21 Statewide nonmetropolitan median household income.
 - 1942.22-1942.49 [Reserved]
 - 1942.50 OMB control number.

Subpart B [Reserved]

Subpart C—Fire and Rescue and Other Small Community Facilities Projects

- 1942.101 General.
- 1942.102 Nondiscrimination.
- 1942.103 Definitions.
- 1942.104 Application processing.
- 1942.105 Environmental review.