

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 762, 764, and 774

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1910, 1924, 1941, 1943, 1951, 1955, 1956, 1962, and 1965

RIN 0560-AG78

2002 Farm Bill Regulations—General Credit Provisions

AGENCY: Farm Service Agency and Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency's (FSA) regulations to comply with provisions of the Farm Security and Rural Investment Act of 2002 (2002 Act). In addition, this rule clarifies direct loan eligibility criteria in accordance with the Department of Agriculture Reorganization Act of 1994. This rule amends the regulations that govern the direct and guaranteed farm loan programs of FSA by revising eligible loan purposes, percentage of loan guarantees, terms for downpayment loans, the direct loan "term limit" and numerous other provisions affecting loan making, servicing and collections. The rule is intended to focus more FSA resources on beginning farmers and ranchers and make more borrowers eligible for FSA farm credit assistance.

DATES: Effective February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Making Division, STOP 0522, 1400

Independence Avenue, SW., Washington, DC 20250-0522; telephone (202) 720-5199; e-mail:

kathy_zeidler@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

This rule is not being published for public notice or to solicit comment from interested parties as a proposed rule because it implements precise requirements of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171)(the 2002 Act) where the Agency has little or no leeway in terms of policy interpretation. Thus, this rule is published as final and is effective immediately. Other provisions of the 2002 Act that involve agency policy considerations in which public participation is required will be published separately according to 5 U.S.C. 553.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, Public Law 96-534, (5 U.S.C. 601), FSA has determined that this rule will not have a significant economic impact on a substantial number of small entities. FSA program participants are predominantly family-size farmers and ranchers and, as defined by the U.S. Small Business Administration, approximately 98 percent of all farmers are classified as small businesses. The provisions in this rule will not impact a substantial number of small entities to a greater extent than large entities. The intent of this rule is to implement legislation. Program participation is voluntary and requires no direct action on the part of small entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Evaluation

The environmental impacts of this final rule have been considered in

accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent any laws are inconsistent with it, and its provisions are not retroactive. Before legal action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

The programs within this rule are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. The rule contains no Federal mandates, as defined by title II of the UMRA. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2) and, therefore, is not subject to the requirements of the SBREFA.

Paperwork Reduction Act

The Agency's information collection requirements, currently approved under OMB control numbers 0560-0154, 0560-0157, 0560-0162, 0560-0166, 0560-0167, 0560-0171, and 0560-0178 are not affected by the final rule.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans

Discussion of the Final Rule

This rule implements the general credit provisions of title V of the 2002 Act as they apply to FSA's Farm Loan Programs (FLP). The changes to Federal credit policies are relatively minor. The changes focus more FSA resources on beginning farmers and ranchers and make slightly more applicants eligible for FSA farm credit assistance. The effects of the changes are difficult to estimate, but they are expected to boost demand minimally for FSA farm loan programs. The specific regulatory changes are discussed below.

Refinancing Bridge Loans

Section 5002 of the 2002 Act authorizes FSA to refinance a temporary bridge loan that was obtained from a commercial or cooperative lender because a shortage of loan funds prevented FSA from closing an approved direct farm ownership (FO) loan. This rule amends 7 CFR 1943.16 to implement this section.

Amount of Guarantee for Operations on Tribal Land

Section 5003 of the 2002 Act expands the category of loans eligible for a 95 (instead of 90) percent guarantee to include operating loans (OL) made to a farmer or rancher whose land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe. This rule amends FSA's guaranteed loan eligibility requirements at 7 CFR 762.129 accordingly.

Term and Loan Percentage Changes for Downpayment Loan Program

Section 5005 of the 2002 Act modifies the terms for loans made under the Downpayment FO Loan Program for qualified beginning farmers and ranchers. Accordingly, this rule amends 7 CFR 1943.14 to specify that loans made under this program will be for 40 (instead of 30) percent of the purchase price or appraised value of the farm or ranch, whichever is less. The term of the loan is limited to 15 (instead of 10) years or less. Also, the time period in which balloon installments are prohibited on loans obtained from other lenders in conjunction with a Downpayment FO loan is increased to 15 (instead of 10) years.

Term Limits on Direct Operating Loans

Section 5101 of the 2002 Act requires the Agency to waive the term limit for a direct OL to a farmer or rancher when their land is subject to the jurisdiction of an Indian tribe and commercial credit is not available. The 2002 Act also provides for a one-time waiver for two years of the direct OL term limit on a case-by-case basis to other borrowers if certain criteria are met. The determination is not subject to administrative appeal. This rule amends 7 CFR 1941.12 to comply with these provisions. One of the statutory requirements for a case-by-case waiver is that the borrower have a "viable farm or ranch operation." The Agency has adopted this requirement by referring to the existing definition of "financially viable operation" at 7 CFR 1941.4 and 1924.54. Another statutory requirement is that the borrower has successfully completed, or will complete within one year, borrower training under section 359 of the Consolidated Farm and Rural Development Act (CONACT). The other statutory requirements for a case-by-case waiver are that the borrower applied for commercial credit from at least two commercial lenders and was unable to obtain a commercial loan, including a loan guaranteed by the Secretary.

Emergency Loan Eligibility for Quarantine Losses

Section 5201 of the 2002 Act authorizes emergency (EM) loans for losses resulting from quarantines imposed by the Secretary under the Plant Protection Act or animal quarantine laws as defined in section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990. This rule amends 7 CFR 764.2 to add a definition of "quarantine" and revise the definition of "disaster" to comply with this requirement.

Entity Eligibility

Section 5302 of the 2002 Act adds trusts and limited liability companies to the list of entities eligible for EM loans and direct and guaranteed OL and FO loans. Thus, 7 CFR 762.102, 764.2, 1910.4, 1924.74, 1941.4 and 1943.4 are amended by revising the definitions of "entity" and "joint operation" to comply with this requirement.

Simplified Loan Guarantee Application

Section 5307 of the 2002 Act increases the loan amount for which FSA can accept a simplified guaranteed loan application from \$50,000 to \$125,000. Accordingly, 7 CFR 762.102 and 762.110 have been amended to meet this requirement.

Beginning Farmer Definition

Section 5310 of the 2002 Act changes the definition of qualified beginning farmer or rancher by increasing the acres of land that these applicants may own to a maximum of 30 (instead of 25) percent of the average farm or ranch size in the county. This rule amends 7 CFR 762.102, 1941.4 and 1943.4 definitions accordingly to comply with this requirement.

Term and Interest Rate Changes for Seed Loans

Section 10103 of the 2002 Act extends to 36 (from 18) months the period of time for which the zero percent interest rate may apply to loans made under the Emergency Loan for Seed Producers Program. The Act also increases the term of these loans to the earlier of 36 months or the settlement of the bankruptcy proceeding involving AgriBiotech. These requirements are implemented in this rule by amending 7 CFR 774.18.

Eligibility Criteria for Direct Loans

Section 227(b) of the Department of Agriculture Reorganization Act of 1994 repealed a portion of section 333 of the CONACT, which contained eligibility criteria relating to an applicant's character and honesty. Therefore, this rule removes these obsolete eligibility criteria from 7 CFR 1941.12 and 1943.12.

Debt Settlement

Section 5303 of the 2002 Act provides the Secretary the authority to approve or disapprove applications for debt settlement and release of liability without the recommendation of, but after consultation with, the local FSA County Committee (COC). The COC will be consulted by the Agency prior to an action of this type to comply with this statute and ensure that all available

information is considered. Also, the previous regulation described many actions involving debt settlement processing and COC recommendation which are internal and have been removed. This rule amends 7 CFR parts 1951, 1955, 1956, 1962, and 1965 accordingly to remove references to COC recommendations.

Interest Rate Options for Loans in Servicing

Section 5305 of the 2002 Act amended the CONACT by requiring FSA to use the lowest of the interest rate in effect at the time the borrower applies for Primary Loan Servicing (PLS), the original interest rate on the loan, or the interest rate being charged for the loan type at the time of deferral, consolidation, rescheduling, or reamortization. Prior to this statutory change, only the latter two options were specified. For the first new option, the time of PLS application will be the time the complete application is received by FSA. This method will be used on program loans with regular or limited resource interest rates. This rule, therefore, revises 7 CFR 1951.909 and Exhibit A of Attachment 1 of part 1951, subpart S accordingly.

Inventory Property

Section 5308 of the Act increases the time that the Agency is allowed to sell real estate inventory property to beginning farmers and ranchers from 75 days to 135 days. Section 5308 further emphasizes the need to maximize opportunities for beginning farmers by combining or subdividing inventory property. This rule amends 7 CFR 1955.63 and 1955.107 accordingly to comply with these requirements. In addition, Exhibits G and G-1 of 7 CFR part 1955, subpart A are removed as they contain only administrative provisions which do not impact the public.

Annual Review of Borrowers

Section 5318 of the Act requires that FSA conduct annual loan assessments of direct loan borrowers. As this review was previously required twice per year, 7 CFR 1924.55 is amended to comply with this requirement.

List of Subjects

7 CFR Part 762

Agriculture, Loan programs—agriculture.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs—agriculture.

7 CFR Part 774

Agriculture, Disaster, Loan programs—agriculture.

7 CFR Part 1910

Agriculture, Credit, Loan programs—housing and community development, Low and moderate income housing, Sex discrimination.

7 CFR Part 1924

Construction, Repair, Planning, Management advice, Loan programs—agriculture, Loan programs—housing and community development.

7 CFR Part 1941

Crops, Livestock, Loan programs—agriculture, Rural areas, Youth.

7 CFR Part 1943

Crops, Loan programs—agriculture, Recreation, Water resources.

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—agriculture, Loan Programs—housing and community development.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management.

7 CFR Part 1956

Account servicing, Accounting, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

7 CFR Part 1965

Foreclosure, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

Accordingly, 7 CFR Chapters VII and XVIII are amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

2. Amend § 762.102(b) by revising the definitions of “Entity,” “Joint operation,” the first sentence in subparagraph (5) of the “Beginning farmer or rancher” definition, and the second sentence of the “Cash flow budget” definition to read as follows:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) * * *

Beginning farmer or rancher. * * *

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. * * *

* * * * *

Cash flow budget. * * * Cash flow budgets for loans under \$125,000 do not require income and expenses itemized by categories. * * *

* * * * *

Entity. Cooperatives, corporations, partnerships, joint operations, trusts, or limited liability companies.

* * * * *

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property may be owned separately or jointly by the individuals.

* * * * *

3. Amend § 762.110 in paragraphs (a) introductory text, (a)(1), (a)(3), and (b) introductory text by removing “\$50,000” everywhere it appears and adding in its place “\$125,000.”

4. Amend § 762.129 by revising paragraph (b)(2) and the last sentence of paragraph (b)(3) and adding paragraph (b)(4) to read as follows:

§ 762.129 Percent of guarantee and maximum loss.

* * * * *

(b) * * *

(2) When the purpose of an FO guarantee is to participate in the downpayment loan program;

(3) * * * The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding; or

(4) When a guaranteed OL is made to a farmer or rancher whose farm or ranch land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe.

* * * * *

PART 764—EMERGENCY FARM LOANS

5. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

6. Amend § 764.2 by revising the definitions of “Disaster” and “Entity”

and by adding a definition of "Quarantine" to read as follows:

§ 764.2 Definitions.

* * * * *

Disaster means an event of unusual and adverse weather conditions, other natural phenomena, or quarantine, that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area designated by the Agency.

* * * * *

Entity means a partnership, corporation, cooperative, joint operation, trust or limited liability company that is an operator of an operation engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.

* * * * *

Quarantine means a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

* * * * *

PART 774—EMERGENCY LOAN FOR SEED PRODUCERS PROGRAM

7. The authority citation for part 774 continues to read as follows:

Authority: Pub. L. 106-224.

8. Amend § 774.18 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 774.18 Interest rate, terms and security requirements.

(a) Interest rate. (1) The interest rate on the loan will be zero percent for 36 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.

* * * * *

(b) Terms. (1) Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 36 months from the date of the note.

* * * * *

PART 1910—GENERAL

9. The authority citation for part 1910 continues to read as follows:

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

Subpart A—Receiving and Processing Applications

10. Amend §1910.4 by revising the heading of paragraph (b), adding a new sentence after the eighth sentence in paragraph (b) and revising paragraph (b)(2) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) Completed Farm Loan Programs applications and additional FSA responsibilities. * * * Applicants who request a waiver of the direct OL term limits in accordance with subpart A of part 1941 of this chapter based on the facts that their land is subject to the jurisdiction of an Indian tribe and their loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, automatically consent to the Agency releasing information as necessary to the Bureau of Indian Affairs to confirm these facts. * * *

(2) If the applicant is a cooperative, corporation, partnership, joint operation, trust, or limited liability company:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the entity by each member, or the percentage of interest in the entity held by each member.

(ii) A current personal financial statement from each member of the entity.

(iii) A current financial statement from the entity itself.

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

* * * * *

PART 1924—CONSTRUCTION AND REPAIR

11. The authority citation for part 1924 continues to read as follows:

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

Subpart B—Management Advice to Individual Borrowers and Applicants

12. Revise § 1924.55 by removing the last sentence of the introductory text, and by revising the heading, adding a first sentence, and revising the last

sentence of paragraph (e) to read as follows:

§ 1924.55 Assessment of the agricultural operation.

* * * * *

(e) Annual review. For all borrowers, the assessment described under this section will be reviewed on at least an annual basis to monitor progress. * * * The year-end analysis under this section may be treated as the required assessment review.

13. Revise the fourth sentence of § 1924.74(b)(1) to read as follows:

§ 1924.74 Borrower Training program.

* * * * *

(b) Processing— (1) Agency review. * * * In the case of a cooperative, corporation, partnership, joint operation, trust, or limited liability company, any individual member holding a majority interest in the entity or who is operating the farm must agree to complete the training on behalf of the entity. * * *

* * * * *

PART 1941—OPERATING LOANS

14. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures and Authorizations

15. In part 1941, subpart A, revise all references to "a cooperative, corporation, partnership, or joint operation" to read "an entity." Also, revise all references to "cooperative(s), corporation(s), partnership(s) or joint operation(s)" to read "entities."

16. In part 1941, subpart A, revise all references to "members, stockholders, partners, or joint operators" to read "members." Also, revise all references to "member's, partner's, stockholder's, or joint operator's" to read "member's." And, revise all references to "member, stockholder, partner, or joint operator" to read "member."

17. Amend the first sentence of § 1941.1 by removing the words "farm cooperatives, private domestic corporation, partnerships, and joint operations" and adding in their place the word "entities."

18. Amend § 1941.4 by removing the number "25" from the first sentence in paragraph (e) of the definition of "Beginning farmer or rancher" and adding in its place the number "30," by adding a definition of "entity," and by adding a sentence at the end of the definition of "financially viable operation" to read as follows:

§ 1941.4 Definitions.

* * * * *

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

* * * * *

Financially viable operation. * * * This definition only applies when considering a term limit waiver under § 1941.12.

* * * * *

19. Amend § 1941.6 by revising paragraph (c) to read as follows:

§ 1941.6 Credit elsewhere.

* * * * *

(c) Property and interest in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

* * * * *

20. Amend § 1941.12 by:

- a. Removing paragraphs (a)(4) and (5);
 - b. Redesignating paragraphs (a)(6) through (11) as (a)(4) through (9) respectively;
 - c. Revising the new paragraph (a)(6);
 - d. Removing paragraphs (b)(5)(iii) and (iv);
 - e. Redesignating paragraphs (b)(5)(v) and (vi) as (b)(5)(iii) and (iv) respectively;
 - f. Revising paragraphs (b)(6)(i), (b)(7)(i), (b)(8)(iii) and (b)(9);
- The revised text reads as follows:

§ 1941.12 Eligibility requirements.

* * * * *

(a) * * *

(6)(i) Have not executed a promissory note for a direct OL loan in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

- (A) The applicant has a financially viable operation;
- (B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

* * * * *

(b) * * *

(6) * * *

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met.

* * * * *

(7) * * *

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met by the entity and all its members.

* * * * *

(8) * * *

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section.

(9)(i) Have no member of the entity who has executed a promissory note for direct OL loans closed in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

- (A) The applicant has a financially viable operation;
- (B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

* * * * *

Subpart B—Closing Loans Secured by Chattels

21. Amend § 1941.54 by revising paragraph (b)(2) as follows and removing paragraph (b)(3):

§ 1941.54 Promissory note.

* * * * *

(b) *Signatures.* * * *

(2) *Entities.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all members of the entity.

22. Amend § 1941.57 by revising paragraph (a) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien, security instruments will be executed by appropriate entity officials, on behalf of an entity borrower. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the security requirements for the loan request.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

23. The authority citation for part 1943 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

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

24. In part 1943, subpart A, revise all references to “a cooperative, corporation, partnership, or joint operation” to read “an entity.” Similarly, revise all references to “cooperative(s), corporation(s), partnership(s) or joint operation(s)” to read “entities.”

25. In part 1943, subpart A, revise all references to “members, stockholders, partners, or joint operators” to read “members.” Also, revise all references to “member’s, partner’s, stockholder’s, or joint operator’s” to read “member’s.” And, revise all references to “member, stockholder, partner, or joint operator” to read “member.”

26. Amend § 1943.1 by removing the words “farm cooperatives, private domestic corporations, partnerships, and joint operations” and adding in their place the words “and entities.”

27. Amend § 1943.4 by removing the number “25” from the first sentence in paragraph (e) of the definition of “Beginning farmer or rancher” and adding in its place the number “30” and

by adding a definition of "entity" to read as follows:

§ 1943.4 Definitions.

* * * * *

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

* * * * *

28. Amend § 1943.6 by revising paragraph (c) to read as follows:

§ 1943.6 Credit elsewhere.

* * * * *

(c) Property and interests in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals, will be considered and used by an applicant in obtaining credit from other sources.

* * * * *

29. Amend § 1943.12 by:

- a. Removing paragraphs (a)(4) and (a)(5);
b. Redesignating (a)(6) through (a)(11) as (a)(4) through (a)(9) respectively;
c. Removing paragraphs (b)(4)(iii) and (b)(4)(iv);
d. Redesignating paragraphs (b)(4)(v) and (b)(4)(vi) as (b)(4)(iii) and (b)(4)(iv); and
e. Revising paragraphs (b)(5)(i), (b)(6)(i) and (b)(7) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

* * * * *

- (b) * * *
(5) * * *

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

* * * * *

- (6) * * *

(i) The requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section must be met by the entity applicant and all its members.

* * * * *

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

- (i) All of the members of the entity are related by blood or marriage,
(ii) All of the members are or will be operators of the entity, and
(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section.

* * * * *

30. Amend § 1943.14 by revising paragraphs (c), (d)(4) and (e)(2)(i) to read as follows:

§ 1943.14 Downpayment FO loan program for beginning farmers or ranchers.

* * * * *

(c) Loan purposes. Loans may be made to provide an amount equal to 40 percent of the purchase price or appraised value, whichever is lower, of the farm or ranch to be acquired, unless the applicant requests a lesser amount. The remaining balance of the purchase price or appraised value, whichever is lower, not to exceed 50 percent, may be guaranteed by the Agency.

(d) * * *

(4) The other financing for the balance of the purchase price is amortized for less than 30 years and/or a balloon payment is scheduled within the 15 years of the Agency loan.

(e) * * *

(2) Terms of loans. (i) Each loan made under this section shall be amortized over a period of 15 years or less, at the option of the borrower.

* * * * *

31. Amend § 1943.16 by adding a new paragraph (e) to read as follows:

§ 1943.16 Loan purposes.

* * * * *

(e) Refinance a bridge loan if the following conditions are met:

- (1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;
(2) Direct FO funds were not available to fund the loan at the time of approval;
(3) The loan to be refinanced is temporary financing; and
(4) The loan was made by a commercial or cooperative lender.

32. Amend § 1943.38 by removing the words "Cooperatives or corporations" from paragraph (g)(3)(ii) and adding in their place the word "Entities," and by removing paragraph (g)(3)(iii).

PART 1951—SERVICING AND COLLECTIONS

33. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart J—Management and Collection of Nonprogram (NP) Loans

34. Amend § 1951.463 by removing and reserving paragraph (e).

Subpart S—Farm Loan Programs Account Servicing Policies

35. Amend § 1951.903 by removing the words "recommended by the County Committee (except where the debt has been discharged through bankruptcy),"

from the second sentence of paragraph (b).

- 36. Amend § 1951.909 by:
a. Revising paragraphs (a)(3), (e)(1)(xii), and (e)(2)(viii);
b. Redesignating paragraph (e)(2)(ix) as (e)(2)(x);
c. Adding new paragraph (e)(2)(ix);
d. Revising paragraph (i)(2)(i).
The revised and added text reads as follows:

§ 1951.909 Processing primary loan service programs requests.

(a) * * *

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the Agency will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in § 1924.74 of this chapter.

* * * * *

- (1) * * *

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for loans made at the regular interest rate will be the lesser of:

- (1) The lowest interest rate for that type of loan on the date a complete servicing application was received;
(2) The lowest interest rate for that type of loan on the date of restructure; or

(3) The lowest original loan note rate on any of the original notes being consolidated and/or rescheduled.

(B) The interest rate for loans made at the limited resource interest rate will be the lesser of:

- (1) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(2) The limited resource interest rate for that type of loan on the date of restructure; or

(3) The lowest original loan note rate on any of the original notes being consolidated and/or rescheduled.

(C) OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(1) The borrower meets the requirements for the limited resource interest rate; and

(2) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

* * * * *

(2) * * *

(viii) Interest rates of reamortized loans will be as follows:

(A) The interest rate for loans made at the regular interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;

(2) The interest rate for that type of loan on the date of restructure; or

(3) The original loan note rate of the note being reamortized.

(B) The interest rate of FO or SW loans made at the limited resource interest rate will be the lesser of:

(1) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(2) The limited resource interest rate for that type of loan on the date of restructure; or

(3) The original loan note rate on the note being reamortized.

(C) FO or SW loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(1) The borrower meets the requirements for the limited resource interest rate;

(2) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section; and

(3) For SW loans, the loan funds were used for soil and water conservation and protection purposes as set forth in § 1943.66 (a)(1) through (a)(5) of this chapter.

(D) SA payment agreement will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(ix) If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Promissory Note is processed and the next installment due date. The amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

* * * * *

(i) * * *

(2) * * *

(i) If the administrative appeal process results in a determination that the borrower is eligible for Primary Loan

servicing, the servicing official will process the request pursuant to this section. The servicing official will use the information the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructuring resulting from appeals, the interest rate will be determined in accordance with paragraphs (e)(1)(xii) and (e)(2)(viii) of this section as applicable. If implementation of the appeal decision would cause writedown or writeoff of more than \$300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

* * * * *

37-38. Amend Exhibit A to subpart S as follows:

a. In Attachment 1, Section I, Subsection 4, the paragraph entitled "Interest Rate for Loan Servicing" is revised.

b. In Attachment 1, Section V, the paragraphs entitled "Approval Requirements" are revised.

The revised text reads as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

* * * * *

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate of the new loan will be either the interest rate on the original loan, the interest rate on the date you submit a complete application for loan servicing, or the interest rate for that type of loan on the date of restructure, whichever is less. If you meet the eligibility requirements, you may be able to get the limited resource interest rate on OL, SW, or FO loans, if the loan was not originally approved with a limited resource rate. For information about current interest rates, contact the FSA county office.

* * * * *

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise or adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in

essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

The County Committee will be consulted on all debt settlements of FLP loans. FSA must find that the statements on your application are true, and that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

* * * * *

PART 1955—PROPERTY MANAGEMENT

39. The authority citation for part 1955 continues to read as follows:

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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

40. Amend § 1955.10 by revising paragraphs (f)(2) and (f)(3) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(f) * * *

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* If the Agency indebtedness plus any prior liens exceeds the market value of the property, the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior liens. Debt settlement will be considered in accordance with subpart B of part 1956 of this chapter.

(i) *Crediting accounts.* The Agency will credit an account by an amount equal to the market value less prior liens, unless the borrower is Native American. Native American borrower-owners will be credited with the fair market value or the Agency debt against the property, whichever is greater, provided:

(A) The borrower-owner is a member of a tribe or the tribe, and

(B) The property is located within the confines of a federally recognized Indian reservation.

(ii) *Agency approval.* The same procedure outlined in paragraphs

(f)(1)(i) through (f)(1)(iii) of this section will be followed for approving the voluntary conveyance. The conveyance will be accepted in full satisfaction of the indebtedness unless the market value of the property to be conveyed is less than the total of Government indebtedness and prior liens, and the borrower has agreed to accept a credit in the amount of the market value of the security property less prior liens, if any.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, and the market value of the property being conveyed (less prior liens, if any) is less than the Government debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the debt.

* * * * *

41. Remove Exhibits G and G-1 to subpart A.

Subpart B—Management of Property

42. Amend § 1955.63 by revising paragraphs (a) and (b) to read as follows:

§ 1955.63 Suitability determination.

* * * * *

(a) *Determination.* The Agency will classify property that secured loans or was acquired under the CONACT as "suitable property" or "surplus property" in accordance with the definitions found in § 1955.53.

(b) *Grouping and subdividing farm properties.* To the maximum extent practicable, the Agency will maximize the opportunity for beginning farmers and ranchers to purchase inventory properties. Farm properties may be subdivided or grouped according to § 1955.140, as feasible, to carry out the objectives of the applicable loan program. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. The environmental effects of such actions will be considered pursuant to subpart G of part 1940 of this chapter.

* * * * *

Subpart C—Disposal of Inventory Property

43. Amend § 1955.107 by revising paragraphs (a)(2)(i), (b) introductory text, (b)(1), and (b)(2) to read as follows:

§ 1955.107 Sale of FSA property (CONACT).

* * * * *

- (a) * * *
- (2) * * *

(i) *Sale to beginning farmers/ranchers.* Not later than 135 days from the date of acquisition, FSA will sell suitable farm property, with a priority given to applicants who are classified as beginning farmers or ranchers, as defined in § 1955.103, as of the time of sale.

* * * * *

(b) *Surplus property and suitable property not sold to a beginning farmer or rancher.* Except where a lessee is exercising the option to purchase under the Homestead Protection provision of subpart S of part 1951 of this chapter, surplus property will be offered for public sale by sealed bid or auction within 15 days from the date of acquisition in accordance with § 1955.147 or § 1955.148. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with paragraph (a) of this section, but has not sold within 135 days from the date of acquisition will be offered for public sale by sealed bid or auction to the highest bidder as provided in paragraph (b)(1) of this section. All prospective buyers will be notified in writing as part of the property advertisement of the presence of any highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

(1) *Advertising surplus property.* FSA will advertise surplus property for sale by sealed bid or auction within 15 days from the date of acquisition or, for those suitable properties not sold to beginning farmers or ranchers in accordance with this section, within 135 days of the date of acquisition.

(2) *Sale by sealed bid or auction.* Surplus real estate must be offered for public sale by sealed bid or auction and must be sold no later than 165 days from the date of acquisition to the highest bidder. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. (*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.) Equally acceptable sealed bid offers will be decided by lot.

* * * * *

44. Amend § 1955.137 by revising the first sentences of paragraphs (b)(3)(ii) and (b)(3)(iii) to read as follows:

§ 1955.137 Real property located in special areas or having special characteristics.

* * * * *

- (b) * * *
- (3) * * *

(ii) After receiving the wetland determination from NRCS, FSA will review the determination for each inventory property and determine if any of the wetlands or converted wetlands identified by NRCS were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired. * * *

(iii) After FSA has completed the determination of whether the wetlands or converted wetlands located on an inventory property were used for cropland or farming, the U.S. Fish and Wildlife Service (FWS) will be contacted. * * *

* * * * *

PART 1956—DEBT SETTLEMENT

45. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

46. Remove and reserve § 1956.57 (f).

47. Amend § 1956.70 by revising paragraph (b)(3) introductory text to read as follows:

§ 1956.70 Cancellation.

* * * * *

(b) * * *

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by use of the appropriate Agency form with the attachments noted below. No attempt will be made to obtain the debtor's signature. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

* * * * *

48. Amend § 1956.84 by revising paragraph (e) to read as follows:

§ 1956.84 Approval or rejection.

* * * * *

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected will be notified of appeal rights pursuant to 7 CFR part 11.

* * * * *

49. Revise § 1956.96 to read as follows:

§ 1956.96 Delinquent adjustment agreements.

A 90-day extension for making the payments may be given by the Agency when the circumstances of the case justify an extension. A decision not to extend the time for making payments is not appealable. If the debtor is delinquent under the terms of the adjustment agreement and is likely to be financially unable to meet the terms of the agreement, the Agency may cancel the existing agreement and process a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. The cancellation of an adjustment agreement is appealable. If an agreement is cancelled, any payments received shall be retained as payments on the debt owed at the time of the adjustment agreement.

PART 1962—PERSONAL PROPERTY

50. The authority citation for part 1962 continues to read as follows:

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

Subpart A—Servicing and Liquidation of Chattel Security

51. Amend § 1962.41 by removing paragraph (f) and revising paragraph (e) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(e) *Unpaid debt.* If the sale of all security results in less than full payment of the debt, the borrower may request debt settlement of the remaining debt. The servicing official will consult with the County Committee before determining if the borrower's account can be debt settled in accordance with subpart B of part 1956 of this chapter.

52. Amend § 1962.46 by revising paragraph (g)(5)(ii) to read as follows:

§ 1962.46 Deceased borrowers.

* * * * *

(g) * * *

(5) * * *

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property.

* * * * *

PART 1965—REAL PROPERTY

53. The authority citation for part 1965 continues to read as follows:

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

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

54. Amend § 1965.26 by removing paragraphs (f)(6) and (g) and revising paragraphs (c)(2)(iv) introductory text and (f)(5) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(c) * * *

(2) * * *

(iv) The Agency approves the compromise or adjustment offer in accordance with subpart B to part 1956 of this chapter and the borrower makes a settlement offer according to the following:

* * * * *

(f) * * *

(5) If the sale of all security results in less than full payment of the debt, the borrower may submit a request for debt settlement. The servicing official will consult with the County Committee before determining if the borrower's account can be debt settled in accordance with subpart B of part 1956 of this chapter.

* * * * *

55. Amend § 1965.27 by removing and reserving paragraphs (b)(19) and (g)(6), revising paragraph (f), amending paragraph (h) by removing the words "County Supervisor" wherever they appear and adding in their place the words "Agency" and revising the fifth sentence of paragraph (h)(1) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government. When the total outstanding debt is not assumed, any request for debt settlement will be processed in accordance with subpart B of part 1956.

* * * * *

(h) * * *

(1) * * * The Agency will consider the following:

* * * * *

Dated: January 31, 2003.

J. B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: February 4, 2003.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. 03-3562 Filed 2-14-03; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[COTP Miami 03-011]

RIN 2115-AA97

Safety Zone: Julia Tuttle Fireworks, Biscayne Bay, Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in Biscayne Bay one mile north of Julia Tuttle Causeway, Miami Beach, FL. The safety zone is established to protect boaters from the hazards associated with the Julia Tuttle fireworks display being held in Biscayne Bay. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 8 p.m. on March 6, 2003 until 11 p.m. on March 6, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03-011 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM1 D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, at (305) 535-4317.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United