

B 5 of this subpart and indexed and tabbed.

(d) *Please submit the following for OGC review.* Copies of:

(1) Letter from FmHA or its successor agency under Public Law 103-354 National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA or its successor agency under Public Law 103-354 449-14, including any amendments;

(3) Loan Agreement;

(4) Promissory Notes;

(5) Security documents—Real Estate Mortgage, Security Agreement, Financing Statements, and Leases (if applicable);

(6) Personal or corporation guarantees with related security documents;

(7) Proposed Form FmHA or its successor agency under Public Law 103-354 449-35.

(8) Proposed Form FmHA or its successor agency under Public Law 103-354 449-34.

(9) Proposed Form FmHA or its successor agency under Public Law 103-354 449-36, if any;

(10) Proposed Lender's Certification (§1980.60 of subpart A of this part); and

(11) Opinion of Lender's Counsel in form prescribed by OGC.

(e) *Do not submit for OGC review* feasibility studies, title information, or the original application unless specifically requested to do so.

(f) *OGC advice.* The Regional Attorney will review the docket and furnish advice to FmHA or its successor agency under Public Law 103-354 on whether it may issue the LOAN NOTE GUARANTEE AFTER THE LOAN IS CLOSED. SUCH ADVICE IS FOR THE BENEFIT OF FmHA or its successor agency under Public Law 103-354 ONLY AND DOES NOT RELIEVE THE LENDER OF ITS RESPONSIBILITIES UNDER FmHA or its successor agency under Public Law 103-354 REGULATIONS. The Regional Attorney at his/her option may attend the loan closing. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

(g) *Delegation of authority.* The State Director may delegate those adminis-

trative duties and responsibilities as authorized in the Administrative sections of this subpart, except those specifically reserved to the State Director.

§1980.498 Business and Industry Disaster Loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Disaster (BID) loan program. The purpose of the program is to provide loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102-368. These guaranteed loans cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992. No BID loan guarantee will be approved after September 30, 1993. All provisions of subparts A and E of part 1980 of this chapter apply to BID loans, except as provided in this section. All forms used in connection with a BID loan will be those used with other Business and Industry (B&I) loans, except as provided in paragraph (m) of this section.

(b) *Location of Applicants.* (1) Section 1980.405 of this subpart. "Rural area determinations," will not apply to BID loans. BID loans may be made in rural and nonrural areas.

(2) Eligible borrowers' businesses must be located within the area covered by the Presidential declaration except for those with qualifying losses from microburst wind in accordance with paragraph (a) of this section.

(c) *Loan Purposes.* Loans may be guaranteed for the purposes listed in §1980.411 of this subpart, "Loan Purposes," except as follows:

(1) *Relationship to disaster.* The purpose of any BID loan must be to cover costs that are a direct consequence of a natural disaster or microburst of wind in accordance with paragraph (a) of this section. The amount of the loan must not be greater than the amount

needed as determined by the Rural Development Administration or its successor agency under Public Law 103-354 (RDA or its successor agency under Public Law 103-354) to cure problems caused by the natural disaster so that the business is reestablished on a successful basis. Facilities which were damaged or destroyed by the natural disaster may be repaired or replaced by modern facilities as necessary to ensure success. Replacement by modern facilities will not be made solely for the purpose of enlarging the business or increasing its production capacity. No loan for a change of purpose of the business will be guaranteed. Eligible refinancing or working capital loans should not exceed the amount needed to overcome the financial distress caused by the disaster. Losses that were adequately paid by insurance or by loans or grants from other sources will not be covered by BID loans. BID loans may be used to supplement insurance payments and/or assistance from other sources when the insurance coverage or other assistance is not sufficient.

(2) *Refinancing.* Section 1980.452, Administrative C.1.(d) of this subpart does not apply to BID loans. If refinancing is needed as a direct consequence of the disaster, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(3) *Agriculture.* Section 1980.412(e) of this subpart does not apply to BID loans. BID loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(4) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of orna-

mental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(5) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(6) *Meat processing facilities.* The provisions of §1980.411(a)(8) of this subpart will not apply to BID loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(d) *Federal Emergency Management Agency (FEMA).* BID loans may be approved only to the extent that the assistance is not available from FEMA. The case file will be documented to show that FEMA assistance was not available or that FEMA assistance is not adequate to cover the costs as a consequence of the natural disaster.

(e) *Small Business Administration.* Section 1980.451 of this subpart will not apply to BID loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(f) *Loan guarantee limits.* Notwithstanding the provisions of §1980.420 of this subpart, the guarantee percentage on any BID loan will not exceed 80 percent.

(g) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or

collateral than would normally be expected for a B&I guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(h) *Equity requirements.* The equity requirements of §1980.441 of this subpart do not apply to BID loans.

(i) *Feasibility studies.* Feasibility studies as required by §1980.442 of this subpart will not be required for BID loans if the business has a successful financial history that supports future plans and projections that indicate a successful operation with adequate repayment ability.

(j) *Collateral.* Section 1980.443, Administrative A. 2., 3., and 4. of this subpart will not apply to BID loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(k) *Conditional approval.* A Form FmHA or its successor agency under Public Law 103-354 449-14, "Conditional Commitment for Guarantee," may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA or its successor agency under Public Law 103-354 449-14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA or its successor agency under Public Law 103-354 449-14 will be issued prior to the obligation date established with the Finance Office.

(1) *Financial statements.* All requirements of §1980.451(i)(13) of this subpart will apply except that it is modified for BID loans to require minimum annual financial statements as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of \$500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of \$500,001 through \$1,000,000, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than \$1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per §1980.113 of subpart B of part 1980 of this chapter.

(m) *Agriculture loans.* The following additional provisions apply to BID loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* This portion of this section contains the regulations for making BID loans to farmers for agricultural purposes. BID loans made for agricultural purposes are subject to the provisions in subparts A and E of part 1980 of this chapter except as specified. In addition, certain sections of subpart B of part 1980 of this chapter referenced in this section are applicable subject to the limitations outlined in this section. BID loans made for agricultural purposes are made under the Business and Industry authority of section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended. In this regard, several key loan processing and loan servicing requirements stipulated in subpart B of part 1980 of this chapter do not apply to loans made to borrowers under this section. Only the material cross-referenced to subpart B of part 1980 of this chapter is to be utilized in lieu of or in addition

to the requirements contained in subpart E of part 1980 of this chapter in processing loans under this section.

(2) *Type of guarantee.* See § 1980.101(e)(1) of subpart B of part 1980 of this chapter. BID loans will be processed under the Loan Note Guarantee option ONLY. No loan will be processed for a Contract of Guarantee (Line of Credit) under this section.

(3) *Abbreviations and definitions.* (i) The abbreviations and definitions found in § 1980.106 of subpart B of part 1980 of this chapter will apply to loans made under this section except for “family farm,” “related by blood or marriage,” and “subsequent loans.”

(ii) Loan guarantees may be made under the BID program without regard to the size of the farming operation.

(4) *Loan eligibility requirements.* In addition to the requirements set forth in this subpart, the requirements in § 1980.175(b) of subpart B of part 1980 of this chapter regarding controlled substances are applicable.

(5) *Filing and processing preapplications and applications.* If the applicant has already developed material for an FmHA or its successor agency under Public Law 103-354 Farmer Programs loan or if the financial and production information required by § 1980.113 of subpart B of part 1980 of this chapter is needed to document repayment ability or is required by the lender, § 1980.113 of subpart B of part 1980 of this chapter may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) Timeframes for applicant/lender notification in § 1980.113 of subpart B of part 1980 of this chapter do not apply.

(iii) If the application is submitted solely for a farm as defined in § 1980.106(b) of subpart B of part 1980 of this chapter, Form FmHA or its successor agency under Public Law 103-354 410-1, “Application for FmHA or its successor agency under Public Law 103-354 Services,” or Form FmHA or its successor agency under Public Law 103-354 449-1, “Application for Loan and Guarantee,” will be used as an application for assistance.

(6) *Evaluation of applications.* If the application is developed and processed in accordance with § 1980.113 of subpart

B of part 1980 of this chapter, the provisions outlined in § 1980.114 of subpart B of part 1980 of this chapter applies with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and the opportunity given for an appeal as set out in subpart B of part 1900 of this chapter.

(7) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. All accrued interest will be due at least annually from the date of the debt instrument. In no case will interest be deferred. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(8) *BID agriculture loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in § 1980.175(c)(1) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c)(1) (iv) and (vii) of that section.

(ii) Real estate purposes as outlined in § 1980.180(c) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c) (1) and (4) of that section.

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(iii) Refinancing in accordance with paragraphs (c)(1) and (c)(2) of this section and §§1980.411(a)(11), 1980.451(i)(19) and 1980.452 ADMINISTRATIVE C [except 1980.452 ADMINISTRATIVE C 1(d)] of this subpart.

(9) *Sodbuster and swampbuster requirements*. The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

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§ 1980.499 [Reserved]

§ 1980.500 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have

been assigned OMB control number 0575-0029. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 58 hours per response, with an average of 4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-XXXX), Washington, DC 20503.

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