

Rules and Regulations

Federal Register
Vol. 60, No. 198
Friday, October 13, 1995

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-95-15]

Dairy Promotion Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Dairy Promotion and Research Order to modify the term expiration date of National Dairy Board members, effective December 1, 1995. The National Dairy Promotion and Research Board feels this action is necessary to enable it to operate more effectively.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Silvio Capponi, Jr., Deputy Director, USDA/AMS/Dairy Division, Room 2953, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4664.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Invitation to Submit Comments on Proposed Amendment to the Order: Issued June 1, 1995; published June 7, 1995 (60 FR 30013).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amendment modifies the term expiration date of National Dairy Board members and will not have an economic effect on any entity engaged in the dairy industry.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Dairy and Tobacco Adjustment Act of 1983 provides in section 121(a) that nothing in the Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

The Dairy and Tobacco Adjustment Act of 1983 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118(a) of the Act, any person subject to an order issued under the Act may file with the Secretary a petition stating that any such order or any provisions of the order or obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant or carries on business has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Notice of the proposed amendment to the order was published in the Federal Register on June 7, 1995 (60 FR 30013), concerning the change in the term expiration date for National Dairy Board members. Interested persons were afforded an opportunity to file written data, views and arguments by July 7, 1995. One comment was received.

Statement of Consideration

Section 1150.132(b) of the Dairy Promotion and Research Order currently provides that each member of the National Dairy Board shall serve until April 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed. The amendment modifies the term expiration date of Board members from April 30 to October 31.

The National Dairy Promotion and Research Board, which administers the order, originally proposed that the term expiration date of Board members be

changed from April 30 to November 30. However, the Board modified its proposed term expiration date to October 31 in a comment letter submitted in response to the proposed amendment.

The Board anticipates that its annual meeting will be held at the end of November. It contends that the modification will enable Board members whose terms are expiring to conclude the program year and allow the terms of new Board members to begin prior to the election of officers at its annual meeting.

The modified amendment request should be granted. The amendment will take effect December 1, 1995, to allow current Board members whose terms would expire on April 30, 1996, to serve until October 31, 1996. Thus, the amendment will allow the Board to operate more effectively to conclude yearly business in a timely manner.

List of Subjects in 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1150, is amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: Pub. Law 98-180, 97 Stat 1128.

2. Section 1150.132(b) is revised to read as follows:

§ 1150.132 Term of Office.

* * * * *

(b) Each member of the Board shall serve until October 31 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

* * * * *

Dated: October 4, 1995.
Shirley R. Watkins,
Acting Assistant Secretary, Marketing and Regulatory Programs.
[FR Doc. 95-25334 Filed 10-12-95; 8:45 am]

Rural Housing and Community Development Service**Rural Business and Cooperative Development Service****Rural Utilities Service****Consolidated Farm Service Agency****7 CFR Part 1980**

RIN 0575-AB70

Removal of the Prohibition Against Capitalizing Accrued Interest When Restructuring CFSA Guaranteed Loans

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The issuing agencies amend their guaranteed farm credit programs loan making and servicing regulations to remove the restriction against lenders capitalizing accrued interest when restructuring loans. The intended effect is to reduce barriers which inhibit lenders from restructuring loans of delinquent guaranteed borrowers.

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, Farm Credit Programs Loan Servicing and Property Management Division, Guaranteed Loans Branch, Consolidated Farm Service Agency (CFSA), USDA, South Agriculture Building, Room 5446, 14th and Independence Avenue SW., Washington, DC 20250-0774, Telephone (202) 690-4012.

SUPPLEMENTARY INFORMATION:**Classification**

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

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

2. The Soil and Water Loan Program is subject to and has met the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following CFSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of the issuing agencies that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order (E.O.) 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR, part 1900, subpart B, or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575-0024 and 0575-0079 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This final rule does not revise or impose any new information collection requirement from those approved by OMB.

Discussion of Final Rule

This final rule relieves the restriction prohibiting lenders from charging interest on interest when restructuring guaranteed Farm Credit Programs loans (formerly Farmer Program loans). It also eliminates the requirement that principal payments be made which are at least equal to the amount of the

depreciation of the security. This policy was proposed in 59 FR 14769-79 published on March 30, 1994. This proposed rule provided a 15 day comment period ending April 14, 1994. These policy changes affect the Farmers Home Administration (FmHA) Farmer Programs loans now administered as Farm Credit Programs by the Consolidated Farm Service Agency (CFSA). This reorganization was authorized by Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Public Law 103-354, 108 stat. 3178, October 13, 1994). Other guaranteed loan programs formerly administered by FmHA will only be affected by conforming administrative revisions made to subpart A of part 1980. These programs include: Water and Waste disposal facility loans administered by the Rural Utilities Service (RUS), Community Programs loans administered by the Rural Housing and Community Development Service (RHCDS), and Business and Industrial loans and Nonprofit National Corporations loans now administered by the Rural Business and Cooperative Development Service (RBCDS). CFSA, RUS, RHCDS, and RBCDS are jointly issuing this final rule since substantial administrative revisions have been made to regulations affecting their programs in an effort to reduce agency regulations. The agency received eight comment letters prior to the deadline for public comment to the proposed rule. Comments were received from lenders that participate in the program, a Rural Economic and Community Development (RECD) (formerly FmHA) State Director, the USDA Office of the Inspector General and others.

The majority of the comments were in support of the proposed changes. The commenters agreed that removal of the prohibition of charging interest on interest would result in more farmers being allowed the opportunity to continue farming after their loans become delinquent.

One commenter agreed that the proposed changes would result in lenders being less reluctant to restructure debts. The same commenter, however, raised concerns about the increased costs of the changes to the government and the farmer. This effect was noted by the Agency in the proposed rule. It was determined that the increased costs would be offset by the benefit of enhancing the likelihood of the farmer's success. This goes directly to the goals of CFSA's guaranteed loan program. The same commenter raised a concern about the proposal increasing profits to the lender.

The Agency determined a regulation change that increases private industry profit should not be avoided for that reason. The increase in profits possible from the change would be negligible and not cause for concern.

Another commenter suggested that late payment charges and interest accrued on these charges be covered by the guarantee. The commenter indicates that allowing these charges to be capitalized into a restructured loan, but not allowing them to be covered by the guarantee will result in a continued administrative burden to the lender. If allowed to be capitalized, these charges, and the interest that accrues on them, will have to be maintained separately from the rest of the restructured loan. The Agency has not adopted this commenter's recommendations. If the guaranteed percentage of late payment fees were paid by the Government, it would reduce the lender's motivation to act expediently in resolving a delinquent account and result in significantly higher losses to the Government.

Another commenter similarly indicated that loss claim preparation will be more difficult as the late payment charges will have to be separated from the other debt. This commenter recommended that only debt covered by the guarantee be allowed to be restructured. In response to the above comments, § 1980.11 and the applicable forms have been revised to prohibit the capitalization of late payment fees. A provision has also been added to § 1980.124 to allow only interest that has accrued at the note rate to be capitalized. This will reduce confusion and administrative costs.

This commenter also pointed out that current agency regulations require loss payments as a result of a guaranteed loan writedown be applied to principal first then interest, to avoid charging interest on interest after the writedown. Removal of the prohibition against charging interest on interest would cause this reference to be unnecessary. The final rule has revised subpart B of part 1980 by removing § 1980.125 (a)(10).

The same commenter also pointed out that the proposed rule indicated the County Supervisor would approve restructuring actions, as long as the amount did not exceed statutory loan limitations. The commenter suggested that the determination of the CFSA approval official should be based on the authorities outlined in exhibit C of subpart A of part 1901 (available in any CFSA office) and the combined unpaid principal and interest to be restructured. To avoid the possibility of County

Supervisors exceeding their approval authority, the Agency has adopted the commenter's recommendations.

As part of this final rule, the agencies are also removing some administrative provisions from the Federal Register and are changing references from "FmHA" to "the agency," "the Agency," "The Agency," "the government," "Government," or "The Government." Also references to "Farmer Programs" are revised to "Farm Credit Programs" to reflect agency reorganization. Other minor wording changes are being made.

List of Subjects in 7 CFR Part 1980

Administrative practice and procedure, Agriculture, Business and industry, Community facilities, Credit, Loan programs—Agriculture, Loan programs—Business and industry, Loan programs—Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

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

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart A—General

2. Section 1980.11 is revised to read as follows:

§ 1980.11 Full faith and credit.

The Loan Note Guarantee and Contract of Guarantee constitute obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. Generally, any Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. In the case of Farm Credit Programs loans, however, a Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to a note that provides for the capitalization of interest is not void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note

Guarantee or Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Form FmHA 1980-15 (available in any Agency office). Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or the Agency has requested the holder to surrender the evidence of debt for repurchase.

§ 1980.12 [Removed and Reserved]

3. Section 1980.12 is removed and reserved.

4. Section 1980.13 is amended by removing the phrase "on Form FmHA or its successor agency under Public Law 103-354 1980-25, 'Farmer Programs Application,'" from paragraph (b)(2); by removing the second sentence of paragraph (b)(4); by revising the words "and/or" to read "and" in the fifth sentence of the introductory text of paragraph (b); by revising "FmHA" to read "the Agency" in the second sentence of the introductory text of paragraph (a), paragraphs (a)(2), (b)(2), the second sentence of paragraph (b)(4), and paragraph (c); by revising "FmHA" to read "The Agency" in the sixth and seventh sentences of the introductory text of paragraph (a) and the first sentence of paragraph (b)(4); by revising "FmHA" to read "Agency" in paragraph (b)(5); and by revising the words "Farmer Programs loans" to read "Farm Credit Programs loans" in the fourth sentence of the introductory text of paragraph (b) and in paragraph (b)(4)(ii).

5. Section 1980.20 is amended by revising the word "FmHA" to read "the Agency's" in paragraph (a)(1); by revising "FmHA" to read "The Agency"

in the introductory text of paragraph (b); and by revising the introductory text of paragraph (a) to read as follows:

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. The Agency will set the percentage of guarantee. The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420. The maximum percentage of guarantee for DARBE guaranteed loans in excess of \$2,000,000 will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed \$2,000,000. The maximum percentage of guarantee for all other loans covered by this section will be ninety percent. Also, except in regards to D&D and DARBE guaranteed loans (see subpart E of this part) or as modified for Farm Credit Programs guaranteed loans (see subpart B of this part), the maximum loss covered by Form FmHA 449-34 or Form FmHA 1980-27 (both available in any Agency office) can never exceed the lesser of:

* * * * *

§ 1980.83 [Removed and Reserved]

6. Section 1980.83 (b) is removed and reserved.

7. Section 1980.84 is amended by removing and reserving paragraph (a) and by revising the section heading and introductory text of paragraph (b) to read as follows:

§ 1980.84 Replacement of guaranteed loan or line of credit documents.

(a) [Reserved]

(b) *Requirements.* When a Loan Note Guarantee, Contract of Guarantee, or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

* * * * *

8. Section 1980.100 is revised to read as follows:

§ 1980.100 OMB control number.

The reporting requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0024. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 28 hours per response, with an average of 2.08 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, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0024), Washington, D.C. 20503.

9. Appendix A to subpart A is revised to read as follows:

Appendix A—Loan Note Guarantee

USDA
 Form FmHA 449-34
 (Rev. 10-95)
 Type of Loan _____
 Applicable 7 C.F.R. part 1980
 subpart _____
 State _____
 County _____
 Date of Note _____
 Borrower _____
 Government Loan Identification Number _____
 Lender _____
 Lender's IRS ID Tax Number _____
 Lender's Address _____
 Principal Amount of Loan _____
 The guaranteed portion of the loan is \$ _____
 which is _____ (_____%)
 percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of \$ _____ and is number _____ of _____.

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

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Consolidated Farm Service Agency, Rural Business and Cooperative Development Service, Rural Utilities Service, or Rural Housing and Community Development Service (herein called "Government"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961 Pub. L. 93-357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, Pub. L. 95-334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed

portion and on interest due (including any loan subsidy) on such portion and any capitalized interest on such portion resulting from the restructuring of a Guaranteed Farm Credit Program loans but not exceeding statutory loan limits.

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

1. Any loss sustained by such Lender on the guaranteed portion including:
 - a. principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and
 - b. Any loan subsidy due and owing, and
 - c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with Government's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

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

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon and any capitalized interest resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

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

Definition of Holder

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

Definition of Lender

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 C.F.R. part 1980. The Lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. Loan Servicing

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not

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

2. Priorities

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

3. Full Faith and Credit

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

4. Rights and Liabilities

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by Government of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to Government any payment made by

Government to Holder which if such Lender had held the guaranteed portion of the loan, Government would not be required to make.

5. Payments

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

6. Protective Advances

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

7. Repurchase by Lender

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

8. Government Purchase

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

rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by Government, such proposed payment will not be later than 30 days from the date of demand.

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

9. Lender's Obligations

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

10. Repurchase by Lender for Servicing

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

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

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

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

11. Custody of Unguaranteed Portion

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

12. When Guarantee Terminates

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

13. Settlement

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

14. Loan Subsidy

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

15. Interest Capitalization

In the case of Farm Credit Programs loans, the Lender/Holder(s) may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the principal amount of the loan listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this Loan Note Guarantee. Such capitalized interest will be covered by this loan Note Guarantee. References to "principal and interest" and "principal advanced" herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Guaranteed Farm Credit Programs loans and not exceeding statutory loan limits.

Position 5

16. Notices

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

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

UNITED STATES OF AMERICA

(insert applicable agency)

By _____

Title _____

(Date) _____

Assumption Agreement by _____

dated _____, 19____
Assumption Agreement by _____
dated _____, 19____

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

Appendix C—Assignment Guarantee Agreement

Position 5

USDA
Form FmHA 449-36
(Rev. 10-95)

Type of Loan _____

Government Loan Identification

Number _____

Applicable 7 CFR part 1980 subpart _____

of _____

(Lender) has made a loan to _____

in the principal amount of \$ _____ as

evidenced by a note(s) dated _____.

The United States of America, acting through

the Consolidated Farm Service Agency, Rural

Business and Cooperative Development

Service, Rural Utilities Service, or Rural

Housing and Community Development

Service (herein called "Government")

entered into a Loan Note Guarantee (Form

FmHA 449-34) with the Lender applicable to

such loan to guarantee the loan not to exceed

_____ % of the amount of the principal

advanced and any interest (including any

loan subsidy) due thereon and any

capitalized interest, resulting from the

restructuring of a Guaranteed Farm Credit

Programs loan and not exceeding statutory

loan limits, as provided therein.

_____ of _____

(Holder) desires to purchase from Lender

_____ % of the guaranteed portion of such

loan. Copies of Borrower's note(s) and the

Loan Note Guarantee are attached hereto as

a part hereof.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now

outstanding is \$ _____. Lender hereby

assigns to Holder _____ % of the guaranteed

portion of the loan representing \$ _____ of

such loan now outstanding in accordance

with all of the terms and conditions

hereinafter set forth. The Lender and

Government certify to the Holder that the

Lender has paid and Government has

received the Guarantee Fee in exchange for

the issuance of the Loan Note Guarantee.

2. Loan Servicing. The Lender will be

responsible for servicing the entire loan and

will remain mortgagee and/or secured party

of record. The entire loan will be secured by

the same security with equal lien priority for

the guaranteed and unguaranteed portions of

the loan. The Lender will receive all

payments on account of principal of, or

interest (including any loan subsidy and any

capitalized interest, resulting from the

restructuring of a Guaranteed Farm Credit

Programs loans and not exceeding statutory

loan limits) on, the entire loan and shall

promptly remit to the Holder its pro rata

share thereof determined according to their

respective interests in the loan, less only the

Lender's servicing fee.

3. Servicing Fee. Holder agrees that Lender

will retain a servicing fee of _____ percent

per annum of the unpaid balance of the

guaranteed portion of the loan assigned hereunder.

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

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

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

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

facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and Government of its decision.

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

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

9. Lender's Obligations. Lender consents to the purchase by Government and agrees to furnish on request by Government a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owned by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by Government does not change, alter or modify any of the Lender's obligations to Government arising from said loan or guarantee nor does it waive any of

Government's right against Lender, and that Government shall have the right to set-off against Lender all rights inuring to Government as the Holder of this instrument against Government's obligation to Lender under the Loan Note Guarantee.

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

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

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

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

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

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

13. Interest Capitalization. In the case of Farm Credit Programs loans, the Lender may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the line of credit listed herein, buy may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this agreement. Such capitalized interest will be covered by this Assignment Guarantee Agreement. References to principal and interest herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of a Farm Credit Programs loans and not exceeding statutory loan limits.

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

Dated this _____ day _____, 19____.

LENDER:
ADDRESS:
ATTEST:
_____(SEAL)

By _____
Title _____
HOLDER:
ADDRESS:
ATTEST:
_____(SEAL)

By _____
Title _____
UNITED STATES OF AMERICA

(insert applicable agency)
ADDRESS _____

By _____
Title _____

11. Appendix D to subpart A is revised to read as follows:

Appendix D—Contract of Guarantee
(Line of Credit)

USDA-CFSA
Form FmHA 1980-27
(Rev. 10-95)
Type of Loan _____
 OL
Case No. _____
State _____
County _____
Lender _____
Lender's Address _____
Borrower's Name and Address _____
Lender's IRS Tax No. _____
Date of Line of Credit Agreement/Note _____
Line of Credit Ceiling
\$ _____

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

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Consolidated Farm Service Agency (herein called "Government"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1, or 2, below:

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

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

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

2. The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s), and any interest due thereon, including any capitalized interest on such portion resulting from the restructuring of an Operating loan and not exceeding statutory loan limits. If an

Operating Loan Line of Credit is involved, advances under the line of credit must be made within three years (five for Certified Lenders) from the date of this Contract. Advances made after that date will be covered by this Contract. If Government conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date Government accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by Government.

Conditions of Guarantee

1. Line of Credit Servicing

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

2. Priorities

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

3. Full Faith and Credit

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

Position 2

In addition, the Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which Government acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by Government in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which

a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Protective Advances

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

5. Custody of Unguaranteed Portion

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

6. When Guarantee Terminates

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

7. Settlement

The amount due under this instrument will be determined and paid as provided in the applicable subpart of 7 C.F.R. part 1980 in effect on the date of this instrument.

8. Interest Capitalization

In the case of Operating loans, the Lender may capitalize interest only when the note is restructured. When delinquent interest is so treated as principal, the new principal amount may exceed the line of credit listed herein, but may not exceed statutory loan limits. The new principal amount and new guaranteed portion will be identified at restructuring in an addendum to this Contract of Guarantee. Such capitalized interest will be covered by this Contract of Guarantee. References to principal and interest herein, therefore, shall include any capitalized interest on the guaranteed portion of the loan resulting from the restructuring of an Operating loan and not exceeding statutory loan limits.

9. Notices

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

 UNITED STATES OF AMERICA
 CONSOLIDATED FARM SERVICE AGENCY
 By _____
 Title _____
 (Date) _____

Assumption Agreement by _____ dated _____, 19____
 Assumption Agreement by _____ dated _____, 19____

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

Appendix E—Agreement for Participation in Farm Credit Programs Guaranteed Loan Programs of the United States Government

USDA-CFSA
 Form FmHA 1980-38
 (Rev. 6-95)

The purpose of this Agreement is to establish the Lender as an approved participant in the Farm Credit Programs Guaranteed Loan Programs of the Consolidated Farm Service Agency (CFSA), U.S. Department of Agriculture (herein called "Government"). This Agreement provides the terms and conditions for originating and servicing such loans, including lines of credit.

Participating Lender ("Lender"): _____

Tax Identification Number: _____

Business Address: _____

Telephone Number: _____

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

Participating in the Certified Lender Program ("CLP")

Offices Affected by Agreement
 All As listed below

States Affected by Agreement _____

Not participating in the Certified Lender Program

Offices Affected by Agreement
 All As listed below

States Affected by Agreement _____

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

Position 2

Part I—General Requirements

A. Duties and Responsibilities of the Government

1. *Payment on Claims.* Government agrees to make payment on its claims in accordance

with the terms of the guarantee and Agency regulations in 7 C.F.R. 1980, subparts A and B. The maximum loss payment may not exceed the amount determined in the guarantee, including the percentage of principal and any accrued interest. The guarantee is supported by the full faith and credit of the United States and is incontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or which the Lender participates in or condones. (See 7 C.F.R. 1980.107.)

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

B. General Requirements for the Lender

1. *Eligibility to Participate.* The Lender must meet the requirements set forth in 7 C.F.R. 1980.13 and be approved by Government to be a participant in the Farm Credit Programs Guaranteed Loan Programs.

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

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

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

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

5. *Conflict of Interest.* The Lender certifies that its officers or directors, principal stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System (FCS) institutions with direct lending authority that have normal stock/share requirements for participating), or other principal owners do not have, or will not have, a substantial financial interest in, or business dealings with, any guaranteed loan borrower. The Lender also certifies that

neither any borrower nor its officers or directors, stockholders, or other owners have a substantial financial interest in the Lender. If the borrower is a member of the Board of Directors of a Farm Credit Bank or other FCS institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level with independently process the loan request and will act as the Lender's agent with servicing the account.

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

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

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

C. Underwriting Requirements

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

2. *Origination Process.*

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

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

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

d. *Change in Borrower's Condition.* Before the Government issues a loan guarantee, the Lender will certify that there has been no adverse change(s) in the borrower's condition, financial or otherwise, during the time period from issuance of a Conditional Commitment to issuance of the guarantee of the loan. This certification by the Lender must address all adverse changes and be

supported by financial statements of the borrower and its guarantors which are not more than 90 days old at the time of certification. For use in this provision alone, the term "Borrower" includes any member, joint operator, partner or stockholder. (See 7 C.F.R. 1980.117.)

e. *Limitation on Guarantee.* Any note requiring the payment of interest on interest will not be guaranteed. Default charges, late charges of any kind, and/or interest accrued on interest charges will not be covered by the guarantee.

3. *Loan Closing.*

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

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

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

- Ensure that documents, including the mortgage and any security agreements, chattel mortgages or equivalent documents relating to it have been properly signed, are valid and contain terms enforceable by the Lender;
- Ensure that all security with appropriate lien priorities is obtained in accordance with Form FmHA 1980-15, and Government regulations;
- Ensure that all closing documents required to be recorded are recorded accurately, in the appropriate offices, and in a timely and accurate manner;
- Ensure that security interests are perfected in collateral according to applicable regulatory requirements and procedures;
- Ensure that all required hazard insurance is obtained in accordance with Government regulations;
- Collect all fees and costs due and payable by the borrower in the course of the loan transaction and disburse payment directly to the parties for services rendered; and
- Ensure that all loan proceeds are used as authorized.

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

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

The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate. The Lender may market all or part of the guaranteed portion of the loan at or after loan

closing only if the loan is not in default as set forth in the terms of the note. A line of credit may only be marketed by participation. Refer to 7 C.F.R. 1980.119 for further guidelines.

D. Servicing Requirements

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

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

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

4. Collateral.

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

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

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

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

5. Delinquent Accounts.

a. The Lender will notify Government using Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status," when a borrower is 30 days past due on a payment or if the borrower has not provided the required financial statements to the Lender or is otherwise in default. The Lender will continue to submit Form FmHA 1980-44 every 60 days until the default is resolved, and will notify the Agency when the default is resolved. A meeting will be arranged by the Lender with the borrower and Government to resolve the problem. Actions taken by the Lender, with written

concurrence of Government, may include but are not limited to, any curative actions contained in subpart B or 7 C.F.R. part 1980 or liquidation.

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

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

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

e. The Lender must participate in any mediation program of any State in accordance with the rules of that system and 7 C.F.R. Part 1980 subpart B, 1980.126.

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

6. Default/Liquidation.

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

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

c. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by

Government, any future funds which may be recovered by the Lender will be pro-rated between Government and the Lender. Government will be paid the amount recovered in proportion to the percentage it guaranteed for the loan.

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

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

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

7. Servicer.

If the Lender contracts for servicing of guaranteed Farm Credit Programs loans, the Lender is not relieved of responsibility for proper servicing of the loans.

E. Agency Reviews of Lender's Operations

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

F. Conformance to Standards

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

- Adequacy in meeting requirements for origination, servicing, and liquidation of

loans and lines of credit, including protection of collateral;

- Satisfaction of the reporting requirements of the Government;
- Success in operating in a sound and prudent businesslike manner;
- Portfolio performance compared to overall performance of the Farm Credit Program Guaranteed Loan Programs; and
- Results of on-site reviews of the underwriting and/or servicing performed by the Lender.

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

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

4. *Lender Right of Appeal.* The Government shall provide the Lender an opportunity to appeal, in accordance with Agency regulations at 7 C.F.R. Part 1980, subpart A, adverse actions taken by the Government.

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

A. List of Agency Regulations

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

1. 7 C.F.R. 1980 subpart A—General
2. 7 C.F.R. 1980 subpart B—Farm Credit Program Loans

B. Authority To Perform Certain Acts

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

Part III—Duration and Modification

A. Duration and Termination

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

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

3. *Termination by the Government.* This Agreement may be terminated by the Government in accordance with Government regulations.

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

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

B. Entire Agreement

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

Part IV—Endorsement

The undersigned certifies that they have read and understand the requirements in this Agreement, and in 7 C.F.R. part 1980, subparts A and B, and agree to the participation requirements and other provisions of this Agreement.

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

Lender: Complete this block of Section IV.

XXI. LENDER _____
(Name)

(IRS I.D. Tax No.)
By _____
(Signature)

(Name Typed or Printed)
Date _____
ATTEST _____

This block of Section IV will be completed by the Government.

The effective date of this Agreement is _____
The expiration date of this Agreement is _____
UNITED STATES OF AMERICA
Consolidated Farm Service Agency
By _____
(Signature)

Title _____

(Name Typed or Printed)

Date _____

13. Appendix K to subpart A is added to read as follows:

Appendix K—Modification of New Contract Relating to Farm Credit Programs Guaranteed Loan/Line of Credit

United States Department of Agriculture

Modification of New Contract Relating to Farm Credit Programs Guaranteed Loan/Line of Credit

The Lender's Agreement or Agreement For Participation in Farmer Programs Guaranteed Loan Programs of the United States Government executed with the Lender dated _____ and the attached Loan Note Guarantee or Contract of Guarantee (Line of Credit) executed with the Lender dated _____ relating to the loan to _____ in the amount of _____ is hereby modified to reflect a new principal amount of _____ as a result of the capitalization of interest at the restructuring of the Farm Credit Programs Loan. This amount does not exceed statutory limits. The new guaranteed portion of the loan is _____.

UNITED STATES OF AMERICA
CONSOLIDATED FARM SERVICE AGENCY
Date _____

By _____
Title _____

14. Appendix L to subpart A is added to read as follows:

Appendix L—Modification of Existing Contract Relating to Farm Credit Programs Guaranteed Loan/Line of Credit

United States Department of Agriculture

Modification of Existing Contract Relating to Farm Credit Programs Guaranteed Loan/Line of Credit

The Lender's Agreement or Agreement For Participation in Farmer Programs Guaranteed Loan Programs of the United States Government executed with the Lender dated _____ and the attached Loan Note Guarantee or Contract of Guarantee (Line of Credit) executed with the Lender dated _____ relating to the loan to _____ in the amount of _____ is hereby modified to permit the capitalization of interest when restructuring the Farm Credit Programs loan PROVIDED that the new principal amount of _____ does not exceed statutory limits. Such capitalized interest on the guaranteed portion of the loan will be covered by the CFSA guarantee and will not void the contract when the capitalized interest result from restructuring. The new guaranteed portion of the loan is _____.

UNITED STATES OF AMERICA
CONSOLIDATED FARM SERVICE AGENCY
Date _____

By _____
Title _____

Subpart B—Farmer Program Loans

15. Section 1980.124 is amended by revising the word “plan(s)” to read “plan” in the third sentence of paragraph (b)(10); by removing paragraph (d)(1); by redesignating paragraph (a)(8) as paragraph (a)(9) and paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2), respectively; by revising the word “FmHA” to read “the Agency” in newly redesignated paragraph (d)(2); by revising the word “FmHa” to read “Agency” each place it appears in paragraphs (b)(8) and (c)(3); by revising the word “FmHa” to read “the Agency” in paragraph (f); by revising paragraphs (a)(4), (a)(6), (a)(7), (b)(6), (b)(12), and (e); and by adding new paragraph (a)(8) to read as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

(a) * * *
 (4) The borrower has acted in good faith demonstrating sincerity and honesty in meeting agreements with, and promises made to the lender and the Agency. This means cooperating in servicing the account and maintaining the security, and satisfactorily completing the Borrower Training program if required.

(6) Any holder agrees in writing to the rescheduling, reamortization or deferral. The holder must understand that it will not receive any payments from the lender or from the Agency during any deferral period.

(7) The lender may capitalize the outstanding interest when restructuring the loan. The restructuring proposal will be reviewed by the appropriate agency loan approval official in accordance with loan approval authorities based on the total outstanding principal and interest at the time of the proposal. Approval of servicing actions on guaranteed loans will be based on the new principal and guaranteed amounts and the authorities set forth in exhibit C of FmHA Instruction 1901–A (available in any Agency office). Approved capitalized interest will be treated as part of the principal and interest indebtedness in calculating the maximum loss amount under § 1980.20.

(8) Only interest that has accrued at the rate indicated on the borrower’s original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower’s failure to make payments as agreed may not be capitalized.

* * * * *
 (b) * * *

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

(12) When a consolidation occurs, the new note or line of credit agreement will describe the notes or line of credit agreements being consolidated and will state that the indebtedness evidenced by such notes or line of credit agreements is not satisfied. The original notes or line of credit agreements will be retained for identification purposes.

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

§ 1980.125 [Amended]

16. Section 1980.125 is amended by removing paragraph (a)(10); by revising the words “and/or” in the first sentence of the introductory text of paragraph (a) to read “and”; by revising “FmHA” to read “the Agency” in the introductory text of paragraph (a) and paragraph (b)(1)(i) each place it appears; by revising “FmHA” to read “Agency” in the introductory text of paragraph (a)(8); and by revising “FmHA” to read “the Agency’s” in paragraph (a)(4).

17. Section 1980.191 is amended by revising paragraph (e) to read as follows:

§ 1980.191 Borrower training program.

(e) *Vendor monitoring.* Borrowers will complete course and instructor evaluations provided by the instructor when the borrowers complete the course.

18. Section 1980.200 is revised to read as follows:

§ 1980.200 OMB control number.

The reporting requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0079. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 4 hours per response, with an average of 1.32 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, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0079), Washington, D.C. 20503.

19. Exhibit D of subpart B is amended by revising the word “holder(s)” to read “holder” in the first sentence of paragraph XVI; by removing the second sentence of paragraph XVI, and by revising paragraphs XIII.D., F. and G. to read as follows:

Exhibit D—Interest Assistance Program

* * * * *
XIII. Servicing of Loans/Lines of Credit Covered by an Interest Assistance Agreement
 * * * * *

D. In the event of reamortization, rescheduling or deferral of loans with Interest Assistance, Interest Assistance will remain available for that loan under the terms of the existing Interest Assistance Agreement. If additional Interest Assistance is needed to produce a positive cash flow throughout the life of the rescheduled/reamortized loan and funds are not available for the additional Interest Assistance, then the rescheduling/reamortization will not be approved by the agency. In no case, will the subsidy be extended more than ten years from the initial effective date of the original Interest Assistance Agreement.

E. * * *
 F. For Loan Note Guarantees held by holders, Agency purchase of the guaranteed portion of the loan will stop Interest Assistance payments on that portion. Interest Assistance payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee by expiration of the document or cancellation by the Government.

G. A lender will notify the Agency when a borrower who is not receiving maximum Interest Assistance is 30 days past due on a payment and is unable to bring the account current within 30 days. The lender will request that the Agency make a determination as to the borrower’s eligibility for Interest Assistance. The lender will submit a plan of operation for the farm projecting the repayment ability of the borrower with and without Interest Assistance. Upon receipt of the agency’s determination, the lender may request Interest Assistance. If the lender declines Interest Assistance, the lender will notify the Agency in writing within 30 days.

* * * * *

Dated: September 14, 1995.

Eugene Moos,

Under Secretary of Agriculture, Farm and Foreign Agricultural Services.

Dated: September 15, 1995.

Jill Long Thompson,

Under Secretary of Agriculture, Rural Economic and Community Development.

[FR Doc. 95-24179 Filed 10-12-95; 8:45 am]

BILLING CODE 3410-07-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-SW-02-AD; Amendment 39-9387; AD 95-21-02]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A-1, 269B, 269C, and TH-55A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A-1, 269B, 269C, and TH-55A helicopters with certain main rotor (M/R) drive shafts installed, that currently requires a one-time radiographic inspection or other non-destructive inspection of certain M/R drive shafts for cracks, distortion, corrosion, or other surface damage, at specified time intervals or upon the occurrence of specified conditions. This amendment requires the same inspections as the previous AD, but expands the applicability of certain inspections to additional models of the affected helicopters, and excludes certain M/R drive shafts from certain inspections. This amendment is prompted by a reevaluation as a result of a comment to the previous AD suggesting the need to expand the applicability of certain inspections to additional models of the affected helicopters and to exclude certain M/R drive shafts from certain inspections. The actions specified by this AD are intended to prevent structural failure of the M/R drive shaft, separation of the M/R from the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of

October 29, 1993 (58 FR 53120, October 14, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond J. O'Neill, Aerospace Engineer, FAA, New York Aircraft Certification Office, New England Region, 10 5th Street, Valley Stream, New York 11581, telephone (516) 256-7505, fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93-14-06, Amendment 39-8630 (58 FR 53120, October 14, 1993), which is applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A-1, 269B, 269C, and TH-55A helicopters, was published in the Federal Register on November 30, 1994 (59 FR 61298). That action proposed to require a one-time radiographic inspection or other non-destructive inspection of the applicable M/R drive shafts of all affected Model 269 series helicopters. That action also proposed to change paragraph (b) of AD 93-14-06 to exclude those replacement drive shafts having an "SZ" or "ZS" prefix from mandatory inspections prior to their installation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for editorial changes and adding explanatory Note 1, relating to the scope of the applicability statement when modifications, alterations, or repairs have been made in the area subject to the requirements of the AD. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1,364 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the AD

on U.S. operators is estimated to be \$818,400.

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

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-8630 (58 FR 53120, October 14, 1993), and by adding a new airworthiness directive (AD), Amendment 39-9387, to read as follows:

AD 95-21-02 Schweizer Aircraft Corporation and Hughes Helicopters, Inc: Amendment 39-9387. Docket No. 94-SW-02-AD. Supersedes AD 93-14-06, Amendment 39-8630.

Applicability: Model 269A, 269A-1, 269B, 269C, and TH-55A helicopters, with main rotor (M/R) drive shaft part number (P/N) 269A5305-3 or 269A5305-11 installed, except those M/R drive shafts having a serial