DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1941, 1943 and 1951

RIN 0560–AG81

2002 Farm Bill Regulations—Loan Eligibility Provisions

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency's (FSA) regulations for direct and guaranteed farm loans to implement provisions of the Farm Security and Rural Investment Act of 2002 (2002 Act). Specifically, the rule provides that borrowers who are current on an FSA loan before the beginning date of the incidence period of a Presidentially-declared disaster or emergency, but who receive debt forgiveness on that loan following the disaster, are eligible for direct and guaranteed operating loan (OL) assistance if all other regulatory requirements are met. It also amends the regulations for direct farm ownership (FO) loans by making applicants eligible if they participated in the business operations of a farm or ranch for at least three of the past 10 years and meet other regulatory requirements. In addition, the rule amends regulations concerning reamortization of amortized Shared Appreciation Agreement (SAA) recapture debt.

DATES: Effective March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–5199; or e-mail *kathy_zeidler@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. The Agency did not receive any adverse comments to this determination in its proposed rule published at 68 FR 17316–17320 (April 9, 2003). All FSA direct and guaranteed loan borrowers and all entities affected by this rule are small businesses according to the North American Industry Classification System and the United States Small Business Administration. There is no diversity in size of the entities affected by this rule and the costs to comply with it are the same for all entities.

This rule revises loan eligibility criteria based on requirements of the 2002 Act. Consequently, a larger number of producers will likely be eligible for FSA credit. However, because of limited funding and restrictions on loan amounts, FSA expects that this rule will have little to no impact on the number of loans made. In fiscal year 2003, the Agency made approximately 28,700 direct and guaranteed loans.

Environmental Assessment

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

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

Executive Order 13132

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

Unfunded Mandates

This rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

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

Paperwork Reduction Act

The Agency's information collection requirements are not affected by the final rule.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically. However, loan application forms are available electronically for downloading through the USDA eForms Web site at *http://www.sc.egov.usda.gov.*

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the

Catalog of Federal Domestic Assistance, to which the rule applies are:

10.406—Farm Operating Loans;

10.407—Farm Ownership Loans.

Discussion of the Final Rule

In response to the proposed rule published on April 9, 2003, (68 FR 17316–17320) seven respondents, including farm interest groups, a State Department of Agriculture, and individuals from five states and the District of Columbia commented. The comments involved all sections of the proposed rule and generally supported most of the changes proposed by the Agency.

Some of the comments dealt with the administrative aspects of program delivery. This rule provides requirements and guidelines, not internal Agency procedures and processes. The Agency will issue handbook amendments and internal notices to provide processes for Agency personnel to follow in administering the regulations. These internal procedural documents are available at any FSA office by request.

Eligibility After Debt Forgiveness Resulting From an Emergency

The proposed rule provided an exception to the general rule prohibiting farm loans to borrowers who have received prior debt forgiveness. As required by section 5319 of the 2002 Act, the rule proposed that FSA farm loan borrowers who received debt forgiveness on not more than one occasion resulting directly and primarily from a major disaster or emergency designated by the President on or after April 4, 1996, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) may be eligible for direct or guaranteed farm operating loans to pay annual farm or ranch operating expenses. The rule also proposed that such debt forgiveness occur within three years following the onset of the disaster or emergency.

Three commentors requested clarification of the timeline for when the exception will apply and recommended that ''onset'' be defined. These commentors also suggested that the second mention of the word ''onset'' in 7 CFR 762.120(a)(2)(iii), 1941.12(a)(8)(ii)(C) and 1941.12(b)(11)(ii)(C) be changed to ''designation date'' or ''disaster date.'' The Agency agrees that the reference to ''onset'' is confusing and has, therefore, revised the first occurrence to state ''the beginning date of the incidence period.'' The incidence period is defined in Agency regulations at 7 CFR part 1945, subpart A as ''the specific date or dates during which a disaster occurred.'' For further clarification, the final rule also changes the second appearance of the word ''onset'' in 7 CFR 762.120(a)(2)(iii), 1941.12(a)(8)(ii)(C), and 1941.12 (b)(11)(ii)(C) to ''designation.''

Two commentors suggested that loan eligibility under this exception be expanded to those who apply for, rather than receive, servicing within three years of the disaster or emergency's onset. The concern was that implementation of loan servicing may take months or years, and that borrowers should not be penalized for delays if they applied for loan servicing in a timely fashion. While FSA recognizes that loan servicing takes time, it does not adopt this suggestion. The proposal would be very difficult to implement since the borrower does not apply for all types of debt forgiveness, *e.g.* debt cancellation from bankruptcy or Government loss from payment of a guaranteed loss claim. When the debt forgiveness occurs is a brighter line of reference and will result in consistent implementation of the loan making policy.

Two comments suggested that the regulation consider farmers who are not more than 30 days past due at the onset of the disaster for this exception. Commentors referred to Agency regulations wherein borrowers are considered ''past due'' for 30 days after a scheduled payment is not made, after which they are considered ''delinquent.'' The Agency recently published a rule which eliminates the 30-day past due period prior to a borrower becoming delinquent. Therefore, this comment is not adopted.

One comment suggested that this exception be triggered by any type of disaster declaration. Section 5319 of the 2002 Act specifically refers to ''a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)'' when authorizing this exception. The Agency must follow the law in defining the applicable disaster; therefore, the comment is not adopted.

One comment suggested that the producer must have been an FSA borrower at the time of the designation. This requirement is implicit in the regulation because borrowers must have been current on their FSA debt before the disaster occurred. Therefore, no change is needed.

One comment suggested that only primary disaster counties be considered for this exception. This comment is not adopted because the Consolidated Farm and Rural Development Act section 321(a) (7 U.S.C. 1961(a)) provides that disaster areas include both primary and contiguous counties.

One comment suggested that the borrower must have been current at the time of the Presidential designation, and that this current status not be the result of the borrower having their account rescheduled or reamortized. This comment is not adopted because it would add unnecessary complexity to eligibility determinations and is too restrictive in the Agency's opinion. Primary Loan Servicing, which includes rescheduling and reamortization, is based on the borrower developing a feasible plan, and the delinquency has to be beyond the borrower's control. The suggested limitation, therefore, is not adopted.

One comment suggested that the time between the disaster and the loss be reduced from three to no more than two years. This comment is not adopted because it could often take more than two years for the total impact of a disaster to be reflected in the financial performance of the operation.

Another comment suggested that the borrower must have received an emergency loan as a result of the disaster to show that the loss was significant and contributed to the operation's need for debt forgiveness. A similar comment suggested that the borrower document that they applied for an emergency loan, Primary Loan Servicing, or Disaster Set-Aside as a result of the disaster to qualify for this exception. This comment on emergency loans is not adopted because it is too restrictive. Currently, interest rates for FSA operating loans are lower than the emergency loan rate. It is conceivable, therefore, that a farmer could obtain an operating loan rather than an emergency loan, but still be impacted by the disaster. This rule, however, does require that the borrower receive debt forgiveness, such as Primary Loan Servicing, within 10 years of the emergency designation.

Participated in the Business Operations of a Farm or Ranch

As required by section 5001 of the 2002 Act, this rule revises an eligibility requirement for FSA's direct FO loan program. Applicants may now be eligible for FO loans if they participated in the business operations of a farm or ranch for at least three years, rather than having operated a farm or ranch for that length of time. FSA proposed to define farm participation consistently with its direct OL program, with regard to acceptable farm experience and on-the-job training. The participation

requirement proposed stated that applicants must have (1) owned, managed, or operated a farm or ranch business for at least three years worth of complete production and marketing cycles; (2) have been employed as a farm manager or farm management consultant for at least three years worth of complete production and marketing cycles; or (3) participated in the operation of a farm or ranch by being raised on or working on a farm or ranch and having had significant responsibility for the day-to-day decision-making for at least three years' worth of complete production and marketing cycles. The proposed rule also included a provision limiting the three years of participation to the five years prior to the date the loan application is submitted, which is consistent with OL eligibility requirements.

Four comments suggested that the Agency delete specific reference to when the participation took place. These commentors argued that this part of the rule could adversely affect loan applicants who have significant and otherwise qualified experience, but may have been in school or the armed services for a period of time before returning to farming as a career. One of these commentors recommended that the rule be changed to three years in the last eight years. The Agency agrees that the five-year limitation is too restrictive and could exclude many otherwise eligible applicants from obtaining needed loan funds. Rather than delete specific reference to when the participation took place, because recent farming experience is still a better indicator of future success, the final rule will increase to 10 years the period of time when participation in the business operations of a farm could have occurred.

Three comments suggested that the Agency clarify what is meant by ''significant responsibility for day-to-day decisions.'' Commentors suggested that examples of eligibility determination criteria be defined in the rule or through administrative notice or handbook, since it would be impractical to come up with an exhaustive list for what actions constitute ''significant responsibility.'' Commentors also recommended that the rule describe the types of documentation (*e.g.*, affidavits) that will satisfy eligibility requirements. The Agency agrees that it would be impractical to come up with an exhaustive list for what actions constitute ''significant responsibility;'' however, some examples have been added for clarity. As suggested, FSA will issue administrative notices or handbook amendments, as necessary, to provide further guidance on these issues.

One comment recommended FSA consider findings of discrimination by the Agency when assessing farming history to determine when the applicant's participation took place. The concern was that discrimination could have forced the applicant to stop farming and, therefore, render the applicant ineligible under this policy. The Agency is increasing to 10 years the period of time when participation in the business operations of a farm could have occurred. This change should alleviate the concern since it allows for more years of no farming.

One comment suggested that the Agency require the three years of participation to have occurred after the applicant reaches age 18. This comment is not adopted because it is too restrictive and may adversely impact beginning farmers without providing any real benefit to the applicant or the Agency.

Reamortization of SAA Recapture Debt

Section 5314 of the 2002 Act authorizes FSA to consider reamortization of amortized SAA recapture debt for up to 25 years from the date of the original amortization agreement when the borrower becomes delinquent on this non-program debt. To be eligible for this reamortization, the default must be due to circumstances beyond the borrower's control, and the borrower must have acted in good faith in attempting to repay the recapture amount. Because such reamortization can be considered even when a borrower has no outstanding FSA loans, or when the SAA was triggered by all FSA loans being paid in full, FSA is amending 7 CFR 1951.901, 1951.907, 1951.909, and 1951.914 to comply with this requirement.

Comments supported the proposed 30-day notification of an incomplete application established in § 1951.907(e) for delinquent non-program borrowers who have only an SAA. No adverse comments were received; therefore, this policy is being adopted as internal Agency policy. It is not published in this rule.

As SAA amortizations are non-program debt, adverse decisions regarding these accounts are not appealable, but are reviewable by the next level Agency official according to 7 CFR 1951.454. One commentor indicated that the proposed language did not clearly refer to these review rights. The Agency concurs with the comment and has clarified the language in § 1951.909.

One commentor felt that the Agency should be able to use deferral, disaster set-aside, rescheduling, consolidation, and limited resource interest rates on SAA amortizations in addition to reamortization. The commentor stated that Congress, had that been its intent, could have confined restructure to reamortization by referring to 7 U.S.C. 1991(b)(3)(a). However, that provision of law does, in fact, include loan consolidation and rescheduling, and the 2002 Act specifically refers to reamortization only. Further, the use of limited resource rates would conflict with 7 U.S.C. 2001(e)(7)(C), which specifies how the maximum interest rate for SAA amortizations is determined. The comment, therefore, is not adopted.

One commentor referred to language in the Conference Committee Report which suggested that the Agency allow appraisal negotiation and the use of ''agriculture value'' when determining SAA recapture. Appraisal negotiation, whereby two or more appraisals are used to obtain a value, however, is required by statute (7 U.S.C. 2001) only for Primary Loan Servicing. A borrower who disagrees with the value determined by the appraisal for SAA recapture may appeal to the National Appeals Division. Thus, the Agency will not implement a multi-appraisal system. Current appraisal requirements fully comply with Federal and state laws, and have not caused any problems. The suggestion would increase administrative costs and burden and, thus, is not adopted.

With regard to ''agriculture value'' appraisals, the Agency notes that the SAA was established by Congress to protect the interest of the taxpayer. In implementing the Consolidated Farm and Rural Development Act, the Agency must ensure consistency and comply with all appraisal standards. Therefore, only market value appraisals will be used when making a determination of SAA recapture. This value is established when each SAA contract is executed, represents the true value of the property, and reflects the total appreciation the borrower has received after having debt forgiven by the Government.

List of Subjects

7 CFR Part 762

General—Agriculture, Loan programs—Agriculture.

7 CFR Part 1941

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

7 CFR Part 1943

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

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—Agriculture, Loan Programs—Housing and community development.

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

PART 762—GUARANTEED FARM LOANS

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

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

■ 2. Amend § 762.102(b) by adding a definition of ''Presidentially-designated emergency'' to read as follows:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) *Definitions.*

* * * * *

Presidentially-designated emergency. A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)

* * * * *

■ 3. Amend § 762.120 by revising paragraph (a) to read as follows:

§ 762.120 Loan applicant eligibility.

* * * * *

(a) *Agency loss.* (1) Except as provided in paragraph (a)(2) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim on:

(i) More than three occasions on or prior to April 4, 1996; or

(ii) Any occasion after April 4, 1996.

(2) The applicant may receive a guaranteed OL to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(i) Received a write-down under section 353 of the CONACT;

(ii) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(iii) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period for a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

* * * * *

PART 1941—OPERATING LOANS

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

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

Subpart A—Operating Loan Policies, Procedures and Authorizations

■ 5. Amend § 1941.4 by adding a definition of ''Presidentially-designated emergency'' to read as follows:

§ 1941.4 Definitions.

* * * * *

Presidentially-designated emergency. A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

* * * * *

■ 6. Amend § 1941.12 by revising paragraphs (a)(8) and (b)(11) to read as follows:

§ 1941.12 Eligibility requirements.

(a) * * *

(8) *Agency loss.* (i) Except as provided in paragraph (a)(8)(ii) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

* * * * *

(b) * * *

(11) *Agency loss.* (i) Except as provided in paragraph (b)(11)(ii) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

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

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

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

■ 8. Amend § 1943.4 by adding a definition of ''participated in the business operations of a farm or ranch'' to read as follows:

§ 1943.4 Definitions.

* * * * *

Participated in the business operations of a farm or ranch. An applicant has participated in the business operations of a farm or ranch if the applicant has:

(1) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycle as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production and marketing cycle; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

* * * * *

■ 9. Amend § 1943.12 by revising the introductory text in paragraphs (a)(6) and (b)(8) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

(a) * * *

(6) Have participated in the business operations of a farm or ranch for at least 3 years out of the 10 years prior to the date the application is submitted and satisfy at least one of the following conditions:

* * * * *

(b) * * *

(8) Have one or more members, constituting a majority interest in the business entity, who have participated in the business operations of a farm or ranch for at least 3 years out of the 10 years prior to the date the application is submitted and satisfy at least one of the following conditions:

* * * * *

PART 1951—SERVICING AND COLLECTIONS

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

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

Subpart S—Farm Loan Programs Account Servicing Policies

■ 11. Amend § 1951.901 by revising the third sentence to read as follows:

§ 1951.901 Purpose.

* * * Shared Appreciation amortized payments (SA) may be reamortized in accordance with §§ 1951.907(e), 1951.909(c)(6) and 1951.909(e)(2). * * *

* * * * *

■ 12. In § 1951.907, remove the second sentence and revise the third sentence of paragraph (c) introductory text, redesignate paragraph (e) as (f) and add a new paragraph (e) to read as follows:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) * * * Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with paragraph (d) of this section. * * *

* * * * *

(e) The Agency will notify delinquent NP borrowers who have only SA amortization agreements within 15 days of the missed payment of their rights with regard to the debt. All items in paragraph (f)(5) of this section, with the exception of Attachments 2 or 4 of exhibit A and information for conservation contracts or debt settlement, must be submitted within 60 days of such notice for the borrower to be considered for reamortization.

* * * * *

■ 13. Amend § 1951.909 by adding a new paragraph (c)(6) and revising the heading of (e)(2) to read as follows.

§ 1951.909 Processing primary loan service program requests.

* * * * *

(c) * * *

(6) Non-Program borrowers who have only SA amortization agreements must meet the requirements in paragraph (c)(1) of this section, have acted in good faith in attempting to repay the recapture amount, and develop a feasible plan. Borrowers who are not eligible under this paragraph will be notified of the adverse decision. After review rights are provided in accordance with § 1951.454, the account will be liquidated in accordance with § 1951.468.

* * * * *

(e) * * *

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes and SA amortization agreements.* * * *

* * * * *

■ 14. Amend § 1951.914 by revising paragraphs (e) introductory text and (e)(11) to read as follows:

§ 1951.914 Servicing shared appreciation agreements.

* * * * *

(e) *Shared appreciation amortization.* Shared appreciation due under this section may be amortized to a Non-program amortized payment unless the amount is due because of acceleration or the borrower ceases farming. The amount due may be amortized as an SA amortized payment under the following conditions:

* * * * *

(11) If a borrower with an SA amortized payment also has outstanding Farm Loan Programs loan and becomes delinquent or financially distressed in accordance with § 1951.906 or if a borrower with an SA amortized payment has no outstanding Farm Loan Programs loan and becomes delinquent on the SA amortized payment, the SA payment agreement may be reamortized in accordance with § 1951.909.

* * * * *

Dated: January 29, 2004.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: January 16, 2004.

Gilbert Gonzalez,

Under Secretary for Rural Development.

[FR Doc. 04–1793 Filed 2–3–04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is amending the regulation to recognize a transition