

Change 13

1. Material transmitted. This Change No. 13 to the CEFR consists of revised Table of Contents, a revised chapter designation and a new document to be added to Chapter 17.

2. Filing instructions:

Remove

Table of Contents.
Chapter 13 [Reserved].

Insert

New Table of Contents.
Chapter 10 [Reserved] in
proper sequence.
Page 17-50-1 through
17-50-37.

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Explanation

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Appendix A Standby Emergency Regulations published in the
 Code of Federal Regulations as of
 January 1, 1970.

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 Notices in the Federal Register.

Chapter 10

Department of Defense

RESERVED

[EFR Doc. 17-50]

Agriculture Department

FARMERS HOME ADMINISTRATION

Program-Related Instructions

DEFENSE EMERGENCY LOANS *C*

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Authorities: These regulations are issued in compliance with the Defense Production Act, as amended, (50 USC App. 2061 et seq.), the Federal Civil Defense Act of 1950, as amended (50 USC App. 2251 et seq.), and Executive Order 11490, as amended. These regulations will become effective when authorized by a law enacted by the Congress or by an order or directive issued by the President pursuant to statutes or the Constitution of the United States; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

§1901.101 Purpose.

This Subpart prescribes Farmers Home Administration (FmHA) policies and procedures to be followed in making and servicing Defense Emergency (DE) loans to farmers and ranchers in the event of an attack or imminent attack on the United States, a Presidential proclamation of a civil defense emergency, or a declaration of war by the Congress. It has been prepared in accordance with the Secretary of Agriculture's notice published in the Federal Register on August 6, 1975 (40 F.R. 33057) which assigned Defense Emergency responsibilities pursuant to Executive Order 11490, the Defense Production Act, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended, (50 U.S.C. App. 2251 et seq.). There is presently no authority for the effectuation of the emergency procedures contained in this Subpart. These procedures may be effectuated only in the event that authority for such effectuation is provided by a law enacted by the Congress or by an order or directive issued by the President pursuant to statutes or the Constitution of the United States. This Subpart will be included in the Code of Emergency Federal Regulations which has been prepared pursuant to section 2002(b) of Executive Order 11490, as amended.

§1901.102 Policy

(a) Loan objectives. The basic objectives of DE loans are to provide eligible applicants with:

- (1) Regular DE loans to continue their normal production of crops and livestock other than those which are classified as critical by the U.S. Department of Agriculture (USDA).
- (2) Critical DE loans to finance the production of critical crops, livestock, and livestock products. Critical crops, livestock, and livestock products are those for which increased production is needed, as determined by USDA, and for which USDA production goals are effective at the time for the area. Such management assistance, as is determined necessary, will be provided in each individual case.

(b) Making loans available. Immediately after a surprise military attack on the United States, or a proclamation of a civil defense emergency by the President, or by a concurrent resolution of the Congress because a military attack is believed imminent or a declaration of war by the Congress, the Chairman of the USDA State Emergency Board will request the FmHA State Director to instruct all County Supervisors under his jurisdiction to:

(1) Make Regular DE loans available at once, and also Critical DE loans for the financing of critical enterprises in accordance with USDA production goals already established and as subsequently established for the area.

(2) Suspend all other FmHA lending programs until further notice except for servicing outstanding loans in accordance with established policies.

(i) Each request by the Chairman will be by memorandum prepared in an original and three copies. The original and two copies will be delivered to the State Director who will retain the original and mail the copies to the FmHA Administrator and the FmHA Finance Office. If mail service is not available at the time, these copies will be mailed as soon as possible.

(ii) As soon as a request is received from the Chairman, the State Director will instruct County Supervisors under his jurisdiction in accordance with the request. This will be done by memorandums to be delivered by mail or by couriers if mail service is not available at the time.

(iii) The Chairman will inform the State Director by memorandum each time USDA production goals are established for the area and each time such goals are obsoleted. The Chairman's memorandum will name the specific crops, and types of livestock and livestock products involved. The State Director will keep County Supervisors currently informed on this subject in order that Critical DE loans will be made only for the production of crops, livestock, and livestock products covered by USDA production goals at the time each such loan is made.

\$1901.103 Eligibility.

To be eligible for either loan, an applicant must:

(a) Be a U.S. citizen. If a partnership, the individual partners must be citizens. If a corporation, the corporation must be incorporated under the laws of the United States, or any State, and the principal stockholders must be U.S. citizens. Any stockholder owning 20 percent or more of the stock will be considered as a principal stockholder.

(b) Be an established farmer or rancher, whether owner-operator or tenant, who manages the farming or ranching operations.

(1) An applicant who does not devote full time to farming or ranching may be considered the manager of the operations if visits to the farm or ranch are made often enough to exercise control and to see that the operations are being carried on properly.

(2) If a partnership or corporation, the entity must qualify as an established farmer or rancher and be primarily engaged in farming or ranching, and the operations must be managed by a partner or stockholder. The operations do not have to be managed by a principal partner or stockholder.

(c) Operate in an area in which the Regular or Critical DE loan is available.

(d) Possess legal capacity to contract for the loan. State Supplements will be issued about this requirement with the advice of the Office of the General Counsel (OGC).

(e) Possess the character, ability, industry, and experience to carry out the proposed operations, and other loan obligations.

(f) Be unable to provide funds from personal resources or to obtain sufficient operating credit elsewhere to finance actual needs at rates and terms the applicant could reasonably be expected to pay. For partnerships or corporations, the principal partners (those owning 20 percent or more interest in a partnership), or principal stockholders (those owning 20 percent or more of the stock), either individually or collectively, must be unable to finance the operations with their own resources or with credit obtainable by them from other sources. The prevailing private and cooperative rates and terms for loans for similar purposes and periods in the community in or near which the applicant resides and the applicant's equity in real estate, chattels, and other assets should be considered in determining ability to obtain credit.

\$1901.104 Loan purposes.

Subject to the restrictions on Critical DE loans set forth in \$1901.105 (b) (1), DE loans may be made for any size operation and in any amount for:

- (a) Farm operating expenses. Purchase of feed, seed, fertilizer, insecticides, and supplies; repair of farm equipment; and other essential farm operating expenses.
- (b) Purchase of farm machinery. Purchase of farm machinery to replace that destroyed or damaged by a military attack or a natural disaster occurring after the attack or worn beyond repair, or lost through foreclosure or repossession by a prior creditor. Replacement items must be comparable in size and service, but not necessarily identical to those being replaced.
- (c) Purchase of livestock.
 - (1) Breeding livestock to replace livestock lost, destroyed, or disposed of as the result of a military attack or a natural disaster occurring after the attack. Circumstances surrounding the loss or disposition will be documented in the borrower's case file.
 - (2) Feeder or stocker livestock, provided it has been the applicant's practice to have a feeder or livestock enterprise; the applicant produces a majority of the feed required for the enterprise; and there will be security for the protection of the Government in addition to a first lien on the feeder or stocker livestock to be purchased with loan funds. In such case, the loan docket will describe the applicant's feeder or livestock enterprises during the past 3 years.
- (d) Cash rent. Payment of not more than 1 year's customary and equitable cash rent, including cash charges as privilege rent, for the use of farm buildings, pasture, hayland, land for the production of feed crops, and grazing permits.
 - (1) The following conditions must exist:
 - (i) Arrangements cannot be made for the cash rent to fall due at the time when income for such payments is expected to become available.

(ii) The applicant under written lease is required to pay the rent in advance of the time when income is expected to become available for that purpose, and payment with loan funds must be made in advance of such time. However, in any situation where livestock is grazed for short periods on a per-head basis, an invoice marked paid in full and signed by the person providing the grazing will be accepted in place of a written lease. Each invoice will show the name of the borrower, the number and type of livestock grazed for the borrower, the grazing period, the cost per head, and the total cost. Each invoice will be retained in the appropriate borrower's County Office file.

(2) Applicants producing cash crops on cash-rented land generally will be expected to have agreements providing that:

(i) The landlord will receive a reasonable share of the crops as rent, or

(ii) The landlord will collect reasonable cash rent, standing rent, or privilege rent from a share of the crops, not exceeding the equivalent of reasonable share rent, or

(iii) Another lender will collect the amount advanced for payment of the applicant's cash rent or privilege rent for the current year from a share of the crops not exceeding the equivalent of reasonable share rent.

(3) If an applicant is producing critical crops on rented land and must pay cash rent in advance, a Critical DE loan may include funds to pay the rent for land to be used for this purpose if the loan approval official determines that it can be done on a sound basis.

(e) Taxes, insurance, and assessments. Payment of taxes and insurance premiums as follows:

(1) Not more than 1 year's taxes and insurance premiums on real or personal property owned by the borrower,

(2) Not more than 1 year's insurance premiums or costs for property and public liability and property damage,

(3) Social security taxes for hired labor only, and

(4) Water or drainage charges or assessments.

(f) Annual operating bills owed for production of livestock, livestock products, and crops. Payment of bills (not secured debts) incurred for authorized DE loan purposes during the crop year for which the loan is being made, and during previous crop years for annual recurring operating expenses in the production of livestock, livestock products, and crops. However, bills incurred for such purposes in connection with livestock, livestock products, and crops that have been disposed of, destroyed, or lost, may be paid only to the extent of the applicant's equity in livestock and equipment taken as security for the loan. Loans will not be made for the payment of bills that:

(1) Can be paid from the sale of livestock, livestock products, or crops to be marketed within a few weeks following approval of the loan, or

(2) Represent an amount beyond the applicant's ability to repay within a reasonable period, or

(3) Represent a significant portion of an applicant's operating expenses for a previous year or years.

(g) Interest payments. Payment of not more than 1 year's interest at a rate not more than that which is reasonable and customary for the area and that is due or about to become due on debts secured by liens of other creditors on livestock, farm equipment, and farm real estate.

(h) Depreciation. Payment of an amount to a creditor equal to 1 year's depreciation on essential farm equipment under prior lien to that creditor not to exceed 15 percent of the market value of such equipment, or 15 percent of the amount owed to the creditor, whichever is less.

(i) Family living expenses. Family subsistence needs, including premiums on reasonable amounts of health and life insurance, and reasonable expenses for medical care. Applicants must understand, however, that within the limits of their resources, they should plan and carry on adequate food production and conservation programs.

(j) DE loan closing expenses.

(k) Repairs and restoration of facilities damaged by military attack or a natural disaster occurring after the attack.

- (1) Replacement, repair, or construction of buildings, silos, storage facilities for feed or water, fences, drainage systems, irrigation facilities, wells, and stock ponds, when needed to restore normal farm production.
- (2) Releveling of land and the clearing of debris.
- (3) Restoration of permanent pastures and the purchase of trees, rootstock, and plants for re-establishing commercial orchards or berry, perennial, and nursery crops.
- (4) Payment of bills for emergency repairs and improvements to farm real estate owned by the applicant, provided:
 - (i) Expenditures are essential to preserve the property or continue the applicant's normal farming or ranching operations, and must be made before a loan can be obtained and,
 - (ii) The loan is approved within a reasonable period after the military attack or natural disaster.

\$1901.105 Loan limitations.

(a) All DE loans.

- (1) DE loans will not be made for the following purposes:
 - (i) Refinance debts, either secured or unsecured, except for the payment of bills as authorized in §1901.104 (f) and in (k) (4) of this Subpart.
 - (ii) Pay Federal or State income taxes or social security taxes payable by borrowers in their own behalf.
 - (iii) Purchase passenger automobiles.
 - (iv) Enable an applicant to become established or re-established in farming.
 - (v) Enable an applicant to purchase real estate or otherwise expand operations substantially in excess of the

applicant's typical operations during the 3 years just before the loan application. However, the applicant may increase acreages of critical crops, or critical livestock numbers, consistent with his or her management ability, land resources, and farm equipment.

(vi) Enable an applicant to make major adjustments in operations. However, minor changes such as the shifting or addition of minor crop or livestock enterprises, including the establishment of small acreages or permanent pastures may be made provided:

- (A) The new crop is proven for the area,
- (B) The applicant has the knowledge and ability to produce the crop,
- (C) The purchase of additional equipment will not be required, and
- (D) The new enterprise will not expand substantially the total crop acreages or total operating expenses.

(vii) Finance commercial feed lot operations.

(viii) Finance unproven types of farming operations in an area.

(2) DE loans will not be made to:

(i) A landlord to lend the funds, in turn, to tenant operators, whether share, cash, or standing rent is paid by these tenants. However, loans may be made to operating landlords or tenants to lend to their sharecroppers.

(ii) An applicant whose debts have been settled under FmHA Instruction 1927-G (FmHA Instruction 456.1) as shown in the County Office records, or if settlement or release under this Instruction is contemplated, unless:

- (A) Failure to pay the loan was the result of circumstances beyond the applicant's control,
- (B) The conditions that necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed, and

(C) The applicant's operations will be sound and afford a reasonable prospect of repaying the loan and meeting other obligations. Before approving the loan, the loan docket and any available case folders, including the County Supervisor's justification for making the loan, will be submitted to the State Office for a determination as to whether the loan should be made.

(iii) An applicant engaged directly or indirectly in the brokerage or related business involving the financing of other producers, or in buying, selling, or processing of livestock or agricultural commodities or flowers produced by others unless separate records are maintained.

(v) Estates, trusts, or to a corporation owned or operated primarily by an estate or trust or by another corporation.

(b) Additional conditions for Critical DE loans.

(1) Critical DE loans may be made only for those purposes authorized in §1901.104 necessary to meet minimum essential expenses for the production of crops, livestock, and livestock products classified as critical by USDA at the time. These loans may not include funds for:

- (i) Living expenses,
- (ii) Equipment purchases,
- (iii) Major equipment repairs,
- (iv) Payment of interest, taxes, or insurance premiums,
- (v) Payment of old bills,
- (vi) Purchase of breeding livestock, or
- (vii) Any real estate purpose.

(2) A critical DE loan will not be made to an applicant who has had little or no experience in producing one or more of the critical crops, livestock, or livestock products to be financed unless the loan approval official determines that, nevertheless, the applicant has the management ability, initiative, general experience, and land resources necessary to afford reasonable prospects for success with the critical enterprise to be financed.

(3) An applicant who will produce critical crops, livestock or livestock products, and who will conduct other farming enterprises, may receive a Regular DE loan to finance other farming or livestock operations. In this event, a separate note will be taken for each loan.

(4) Critical DE loans are made under an agreement (Exhibit A) with each borrower that if income from the enterprise (after paying reasonable amounts as agreed on with the County Supervisor for harvesting and marketing expenses, and paying cash rent if the loan was made subject to the cash rent being paid with income) is not adequate to pay the loan in full, FmHA will cancel any remaining deficiency of principal and interest on application by the borrower. The FmHA county Committee, however, must recommend cancellation, and the State Director must approve it. The State Director will base his decision on whether the borrower used due diligence, good husbandry, and proper management in conducting the critical enterprise financed with a Critical DE loan and properly accounted for all income from such enterprise.

(5) Each applicant receiving a Critical DE loan will be given a completed form prepared in the format of Exhibit A, "Critical Defense Emergency Loan Made for Production of Critical Crops, Livestock, or Livestock Products."

(6) The County Supervisor will inspect each enterprise of critical crops, livestock, or livestock products financed with Critical DE loans at intervals during production to determine whether the borrower is exercising due diligence, and proper management. Observations in each case will be recorded and dated in the running record.

(7) In addition to the other obligations required under a Critical DE loan, the borrower is expected to:

(i) Exercise due diligence, good husbandry, and proper management in conducting the described critical enterprise(s).

(ii) Inform the County Supervisor at intervals during the period of the loan about the condition of the critical enterprise(s).

(iii) Report to the County Supervisor immediately upon the occurrence of any circumstance which might adversely affect the critical enterprise(s).

(iv) Report to the County Supervisor any reduction in the size of the planned critical enterprise(s) and refund, for payment on the loan an amount determined by the County Supervisor not to be needed because of the reduction.

(v) Account to the Farmers Home Administration for all income received from the described critical enterprise(s). Harvesting and marketing expenses in amounts agreed to by the County Supervisor may be paid with income. Also, if the loan is made subject to the payment of cash rent, the required amount may be paid with income. All remaining income must be paid on the Critical DE loan account.

§1901.106 Rates and terms.

Interest will be charged at a rate set by the Secretary of Agriculture on all DE loans. Interest will accrue from the date of the loan check on outstanding principal only, and will not be compounded.

(a) Scheduled payments. Payments on principal will be scheduled on the note in accordance with the borrower's reasonable ability to pay determined by an analysis of the borrower's farm and home operations indicated on Form FmHA 431-2, "Farm and Home Plan." Principal payments on such loans will be scheduled at least annually. If it is determined, however, that income sufficient to meet the initial payment will not be received within 12 months from the date of the loan check, the initial payment may be scheduled on a date coinciding with the date the income is to be received, but not beyond 3 years after the date of loan loan. At least one payment will be scheduled during each 12-month period thereafter. In no event will any payment be scheduled later than 7 years from the date of the loan check, except as provided in paragraph (b) (4) of this section.

(b) Advances.

(1) Advances for annual recurring operating expenses, and for the payment of bills for the current year's operations, interest, taxes, and depreciation will be scheduled for payment when the principal income from the year's operations would be received.

However, if income from the year's operations will not be adequate for this purpose because of a military attack, an amount consistent with repayment ability from the estimated income to be received will be scheduled in subsequent annual installments but not beyond 3 years after the date of the loan.

(2) Advances to purchase or produce feed for productive livestock or for livestock to be fed for the market will be scheduled for payment when the principal income from the sale of such livestock or livestock products can be expected.

(3) Advances for the purchase of farm machinery and equipment ordinarily will be scheduled for payment over a period not to exceed 5 years. In determining the DE loan payment period for these advances, the loan approval official will carefully consider the useful life of the property and that repayment on such advances must more than offset depreciation, including obsolescence, of the equipment if the borrower is to make financial progress.

(4) Advances for real estate purposes, secured primarily by real estate liens, may be scheduled over periods not to exceed 20 years.

(5) Advances for purposes other than those listed in paragraphs (b) (1), (2), (3), and (4) of this section will be scheduled for payment over the minimum period consistent with the applicant's ability to pay. This period will be determined from an analysis of the farm and home operations as shown in Form FmHA 431-2. The payment scheduled will not extend beyond the useful life of the security offered for the advance.

§1901.107 Security.

(a) DE loans for real estate purposes.

(1) Advances for more than \$10,000. Advances for real estate repairs and improvements, including orchard rehabilitation for more than \$10,000 and scheduled for repayment for longer than 5 years, will be secured only by liens on real estate in which the applicant has enough equity to provide adequate security for the loan.

(i) Appraisal. The applicant's equity will be determined by an appraisal showing the present market value of the real estate. This appraisal will be made by an FmHA employee

authorized to make appraisals. Form FmHA 422-1, "Appraisal Report, (Farm Tract)" and related forms will be used. The appraiser's estimate of the present market value of the property will be shown in part 8 of Form FmHA 422-1.

(ii) Purchase contract. If the property is held under a purchase contract, it must be determined that:

(A) The applicant has a mortgageable interest in the property.

(B) The purchase contract is not subject to summary cancellation on default, and does not contain other provisions that might jeopardize the Government's security position or the borrower's ability to repay the loan.

(iii) Prior liens.

(A) Prior lienholders must agree in writing, before the loan is closed, to modify, waive, or subordinate any future advance or other provisions that might jeopardize the Government's security position, or the applicant's ability to meet obligations under these prior liens and also repay the DE loan. Usually Form FmHA 427-8, "Agreement with Prior Lienholders," will be used. It may be modified as necessary to meet legal requirements for closing a particular loan.

(B) In States in which a prior lienholder may foreclose his security instrument under power of sale or otherwise and extinguish junior liens of private parties without making junior lienholders parties or giving them actual notice, and a junior lien on real estate is to be taken as security for the loan, the prior lienholder must agree in writing to give the Government advance notice of foreclosure or assignment of the mortgage. A State Instruction will be issued, with the advice of OGC, to indicate whether such agreements will be necessary in each particular State. If needed, the State Instruction will state the procedures and requirements for obtaining and recording such agreements.

(iv) Insurance.

(A) If buildings are on the property, or if new buildings are to be erected or major improvements made to existing buildings, the applicant will obtain adequate property insurance coverage at the time of loan closing or when materials are delivered to the property, as appropriate, in accordance with FmHA Instruction 1930-C (FmHA Instruction 426.1).

(B) If insurance claims for buildings to be replaced or repaired with loan funds are outstanding at the time the loan is made, the applicant must agree in writing that the proceeds of these claims will be used for replacement or repair of buildings, or paid to the Government to apply to the loan when settlement is made, or applied to debts secured by prior liens.

(2) Advances for \$10,000 or less. When an amount not to exceed \$10,000 is being advanced for real estate purposes, and the advance can be scheduled for repayment over a period not to exceed 5 years, the advance may be secured by either:

(i) A first lien on chattel property having a value that will provide adequate security, so long as the taking of a chattel lien will not interfere with the applicant's ability to obtain operating credit, or

(ii) The best lien obtainable on the applicant's real estate in which there is an equity that will adequately secure the advance. The applicant's equity will be determined by an appraisal and by the total amount of debts secured by liens on the property as shown in Table A of Form FmHA 431-2. Title clearance will not be required for real estate liens taken under this paragraph.

(b) DE loans for other than real estate purposes. These loans will be secured as follows:

(1) Crops under title of the applicant. A first lien will be taken on growing crops or crops to be grown by the applicant, subject to one or more of the following conditions, as appropriate:

(i) The landlord's lien on crops for a reasonable share rent for the current year.

(ii) The landlord's lien for the current year's customary and equitable cash rent, including cash charges as privilege rent, for the use of farm buildings, pasture, hayland, land for the production of feed crops, and grazing permits for applicants who are not engaged primarily in livestock feeding operations.

(iii) The landlord's claim or lien for the current year's customary and equitable cash rent, standing rent, or privilege rent for land to be used to produce cash crops when the rent is to be collected from a reasonable share of the crops and does not exceed the equivalent of a reasonable share rent. The landlord must agree in writing that only a specified reasonable share of the crops will be subject to the payment of his rent. This agreement will be placed in the borrower's file. In States in which landlords do not have statutory liens on crops for rent, a landlord's claim for rent under this paragraph will be considered the same as if secured by a first lien on a reasonable share of the crops.

(iv) The claim of another lender against a reasonable share of the cash crops (not exceeding the equivalent of a reasonable share rent) for advances made by that lender to pay the current year's cash rent. The other lender will enter into a written agreement to collect from a specified reasonable share of the crops. This agreement and a receipt from the landlord showing that the rent has been paid will be placed in the borrower's file. The other lender's claim will be considered the same as if secured by a first lien on a reasonable share of the crops.

(v) The real estate mortgagee's lien, or a lien of the holder of a purchase contract on the crops for the current year's installment related to the normal rental charges for similar farms in the area.

(vi) The lien of another creditor on particular crops for advances made or to be made to produce such crops, provided no advances will be made by FmHA in connection with such crops.

(vii) The contract of another creditor, or the lien in connection with such contract on particular crops for advances made or to be made to produce, harvest, process, or market such crops, provided:

(A) The crops are under written contract with the creditor, and

(B) The contract limits advances to production, harvesting, processing, or marketing costs for the contract crops or to purposes related to the crops.

(2) Crops under title of the contractor. Loans may be made if a crop is being produced, harvested, processed, or marketed by the applicant under an equitable written contract and title to the crop is held by the contractor. The contractor will limit advances to production, harvesting, processing, or marketing costs for the contract crop or to purposes relating to them. An assignment of all or part of an applicant's share of the income from the crop will be given to FmHA and will be accepted in writing by the contractor holding title to the crops. The assignment will be in an amount equal to that planned to be paid on the applicant's FmHA debt from the crops. However, when no payment is expected to be made on the loan from the crops, an assignment will not be required. The form for obtaining the assignment will be approved by OGC. The Uniform Commercial Code (UCC) States, the assignment will constitute a security agreement on the crop income, and the contract will be described specifically, or as "Contract Rights" or "Contract Rights in Crops," and so forth, in paragraph 1 (b) of Form FmHA 440-25, "Financing Statement."

(3) Livestock, poultry, farm equipment, and facilities purchased with loan funds.

(i) A first lien will be taken on all such items, except equipment, facilities, or buildings that cannot be made subject to a valid chattel lien, or, in UCC States, a valid security instrument; poultry kept primarily for subsistence purposes; and household goods and equipment; small tools; and equipment having only minor security value. (For feeder livestock purchased with loan funds, see §1901.104 (c) (2).)

(ii) In chattel mortgage States and in those UCC States in which State Instructions so provide, Form FmHA 440-6, "Severance Agreement," will be used when DE loan funds are

used to purchase property that is or may become a fixture and it is necessary to sever this property from real estate to meet the security requirements of this paragraph. In UCC States in which the State Instruction does not require use of form, Form FmHA 440-26, "Consent and Subordination Agreement," will be used as necessary to meet the security requirements of this paragraph. These forms also will be used to meet the security requirements, as appropriate, of paragraph (b) (4) of this section.

(4) Other livestock and farm equipment of security value. The best lien obtainable will be taken on as much of the other livestock, poultry, and farm equipment of significant security value owned by the applicant at the time the loan is approved as is necessary to protect the Government's interest. This security will include any undivided interest in the property owned by the applicant jointly with others who have an interest in the farming operation. Ordinarily, liens should not be taken on

(i) Only a part of a herd or flock due to security servicing problems.

(ii) Household goods; small tools, and equipment having minor security value; passenger automobiles; livestock or poultry kept primarily for subsistence purposes; or on an undivided interest in farm equipment or facilities owned jointly by the applicant with others who have no interest in farming.

(5) Feed purchased or produced with loan funds. Loans to purchase or produce feed for livestock being fed for market or to be fed to productive livestock (excluding livestock and poultry kept primarily for subsistence purposes), will ordinarily be secured by first liens on the livestock. However, when a first lien cannot be obtained, the loan will be secured by liens or assignments as follows:

(i) When the livestock will be owned by the applicant and a first lien cannot be obtained, a junior lien will be taken provided:

(A) The applicant has or will acquire during the feeding period an equity in the livestock being fed or will receive income from livestock or livestock products, either of which must be commensurate with the investment made for this purpose, and

(B) Prior lienholders will sign Form FmHA 441-13, "Division of Income and Nondisturbance Agreement," or a similar form approved by OGC. This agreement should be completed to permit the applicant to pay the loan in accordance with the policies in this subpart. However, when no loan payment is expected from the livestock or livestock products, the form will not be required.

(ii) When the livestock enterprise is to be managed by the applicant under a livestock share lease, share agreement, or contract, and the income to be received from it will be from the livestock fed, or from livestock products, an assignment of all or part of the income will be taken. The owner or purchaser of the livestock or livestock products must, however, accept the assignment in writing.

(A) The assignment will be in an amount at least equal to the amount planned to be paid on the applicant's FmHA debt from such income. The form to obtain this assignment will be approved by OGC. However, when no payment is expected to be made on the loan from the livestock or livestock products, an assignment will not be required. In UCC States, an assignment, if taken on the livestock income, will constitute a security agreement on the income. The share lease, share agreement, or contract will be described specifically or as "Contract Rights" or "Contract Right in Livestock" and so forth, in paragraph 1 (b) of Form FmHA 440-25.

(B) If the borrower's compensation under the livestock share lease, share agreement, or contract is livestock increase, the applicant must agree in writing at the time the loan is made to give a first lien on such increase as soon as an effective lien can be taken, unless it is provided for in an after-acquired property clause in an existing lien instrument.

(6) Crop and life insurance proceeds. Assignments of all or part of crop insurance proceeds will be taken when the loan approval official determines it is necessary to protect the interests of the Government. However, an assignment is not required if a crop insurance policy contains a standard mortgage clause naming FmHA as mortgagee or secured party.

Assignments of life insurance proceeds will be required when relatively large amounts are being loaned or leased for paying annual premiums.

(7) Proceeds from sale of agricultural products.

(i) UCC States. Since the security agreement in UCC States will cover agriculture products such as milk, eggs, and wool, Form FmHA 441-18, "Consent to Payment of Proceeds From Sale of Farm Products," will be used rather than an assignment of income. However, assignments of incentive and agricultural program payments will be taken in UCC States the same as in chattel mortgage States.

(ii) Chattel mortgage States. If loans are made to finance dairy or commercial egg enterprises from which payments are expected, assignments on Form FmHA 441-8, "Assignment of Proceeds from the Sale of Agricultural Products," will be taken on the milk or egg income. This assignment will assist in obtaining regular payments as income is received, whenever it is possible to obtain an agreement from the purchaser to honor the assignments. The assignment will assist in obtaining regular payments as income is received, whenever it is possible to obtain an agreement from the purchaser to honor the assignments. The assignment will be in an amount sufficient to meet repayments planned from this source. Assignments of proceeds from the sale of other agricultural products or agricultural income, including wool incentive and agricultural program payments, will be taken when necessary to protect the interest of the Government and when they can be obtained.

(8) Real estate as additional security. The best lien obtainable usually will be taken as additional security for relatively large loans, and in other cases when, in the opinion of the loan approval official, such a lien is needed to protect the Government's interest. If a lien is required as additional security, an appraisal of the farm will not be necessary, and title evidence will not be required. Property insurance will be required only if the loan approval official determines that the insurance is necessary to protect the Government's interest, in which event FmHA Instruction 1930-C (FmHA Instruction 426.1) will be followed.

(c) DE loans for both real estate and other purposes. When an applicant is receiving a Regular DE loan or both Regular DE and Critical DE loans for operating expenses and, in addition, a Regular DE loan for real estate purposes other than under the circumstances described in paragraph (a) (2) of this section, only one loan docket will be prepared to show

the amount of funds to be advanced under each loan. Notes and vouchers will be prepared separately for the amount to be advanced under each loan.

(1) Notes evidencing advances for operating purposes will be secured as outlined under paragraph (b) of this section and also by liens taken to secure notes evidencing advances for real estate purposes.

(2) Notes evidencing advances for real estate purposes will be secured as outlined under paragraph (a) of this section. These notes will not be secured by crop and chattel liens.

\$1901.108 County Committee certification.

(a) For loan to individual. Before a DE loan to an individual is approved, the County Committee will certify on Form FmHA 440-2, "County Committee Certification or Recommendation," that the applicant is eligible for a loan in accordance with \$1901.103. In addition, the County Committee will establish the maximum amount of credit which may be extended under the certification to meet the actual needs of the applicant during the crop year. The maximum amount of credit established will not necessarily represent the amount that actually will be loaned. For this reason, to avoid possible misunderstandings, the applicant will not be notified of the maximum amount of credit established by the County Committee.

(b) For loan to partnership or corporation. Before a DE loan is made to a partnership or corporation, the County Committee will certify on Form FmHA 440-2 that the partnership or corporation is eligible and will recommend that a loan be made in an amount not to exceed the maximum certified amount shown on the form.

\$1901.109 Loan approval.

(a) Authority. All DE loans will be approved in accordance with the authorities contained in this Subpart.

(1) County Supervisors are authorized to approve DE loans not to exceed an applicant's total unpaid principal balance on DE loans of \$75,000.

(2) District Directors are authorized to approve DE loans not to exceed an applicant's total principal balance on DE loans of \$150,000.

(3) State Directors are authorized to approve DE loans not to exceed an applicant's total principal balance on DE loans of \$500,000. If the balance exceeds \$500,000, a DE loan may be approved by the State Director only with the prior concurrence of the Administrator. However, the State Director may approve such loans with the prior concurrence of the Chairman of the USDA State Emergency Board if mail delivery has been interrupted because of military attack. The chairman's determination and prior concurrence will be by memorandum, if possible, in each individual case with the original submitted to the State Director and kept in the State Office and a copy kept in the USDA State Emergency Board Office.

(b) Administrative determinations. After the County Committee certification has been made, the loan approval official will determine whether:

(1) The applicant is eligible and likely to be successful in the proposed operations and to achieve the objectives of the loan.

(2) The applicant has satisfactory tenure arrangements for operating the farm.

(3) The proposed farm and home operations of the applicant are sound.

(4) The loan is sound and can be repaid from income as scheduled.

(5) The amount of the loan and the purposes for which the funds are to be used are consistent with the applicant's needs and are for authorized purposes.

(6) The security requirements can be met.

(7) The certifications required of the applicant and the FmHA County Committee have been made and are a part of the loan docket.

§1901.110 Subsequent loans.

Subsequent DE loans may be made within the limitations, policies, and authorities contained in this Subpart when the applicant is still unable to obtain credit from other sources, or the subsequent loan is necessary to

protect the Government's interest in DE loans previously made. In either event, there must be reasonable assurance that the subsequent loan will be repaid. In connection with regular DE loans, there also must be assurance that the balances owed on previous loans that are not eligible for cancellation will be repaid or substantially reduced within a reasonable period.

§1901.111 Processing DE loans.

Loans made pursuant to this Subpart will be processed in the same manner as Operating loans in accordance with FmHA Instruction 441.3, subject to the following modifications:

(a) Partnership and corporation applicants.

(1) If the applicant is a partnership, personal financial statements will be obtained from each of the principal partners and included in the loan docket, in addition to the partnership's financial statement.

(2) If the applicant is a corporation, the corporation will furnish a complete list of its stockholders, showing the address, principal occupation, and the number of shares of stock held in the corporation by each. Personal financial statements will be obtained from each of the principal stockholders and included in the loan docket. A copy of the corporation's charter of articles of incorporation, bylaws, any resolutions adopted by the Board of Directors authorizing the corporation to borrow and pledge its assets, and any leases, contracts, or agreements entered into by the corporation that may be pertinent to considering its application also will be included in the loan docket.

(3) If the applicant is a partnership, or operates as one, Form FmHA 441-1, "Promissory Note," will be executed to evidence the liability of the partnership as well as each principal partner as an individual. The name of the partnership will be typed above the space for signatures and the note executed by each principal partner, both as an individual and as a partner. To evidence the liability of the partnership, the words "As Partners" will be typed immediately beneath the name of the partnership, and each principal partner will sign below. To evidence the principal partner's

liability as individuals, the words "As Individuals" will be typed at the top of the blank space to the left of the lines for signatures, and each principal partner will sign below, along with spouse, if required by State Instructions or loan closing instructions.

(4) If the applicant is a corporation, Form FmHA 441-1 will be executed by the corporation acting through its appropriate officials. To evidence their personal liability for the debt, the principal stockholders as individuals will execute Form FmHA 441-1 except when legal disability, absence from the country, or limitations in prior contracts with the corporation, make this impractical and the approval official has determined that the Government's interest will be reasonably protected without the personal liability of one or more of the principal stockholders. The name of the corporation will be typed above the space for signatures, and the name and title of each official to sign for the corporation will be typed below his signature. The signatures of the principal stockholders will be obtained in the same manner as indicated in paragraph (a) (3) of this section for individual members of a partnership.

(5) Before execution, "Regular DE Loan" or "Critical DE Loan," as appropriate, will be typed across the top of each note.

(6) At the time a Critical DE loan is closed, the County Supervisor will give the borrower a completed form in the format of Exhibit A in an original and one copy and have a copy placed in the borrower's County Office file.

(b) Appraisal of chattel property. Chattels under prior lien to another creditor will be appraised by the County Supervisor when funds are to be advanced for the payment of:

(1) Depreciation pursuant to §1901.104 (h) of this Subpart, and

(2) Bills pursuant to §1901.104 (f) incurred in the production of livestock, livestock products, or crops that have been disposed of, destroyed, or lost.

(c) Tenure Agreement. Joint discussions between the tenant, landlord, and County Supervisor will not apply.

(d) Coding DE loans. Identify DE loans as follows:

- (1) Regular DE loan -- use Code "DR."
- (2) Critical DE -- use Code "DC."
- (e) Closing DE loans that are to be secured by real estate.
 - (1) Form FmHA 427-1 (State), "Real Estate Mortgage for _____," will be used in taking liens on real estate. This form will be prepared, executed, and filed or recorded in accordance with State Instructions and any additional instructions received from the designated attorney or OGC.
 - (2) Title clearance and the closing of DE loans to be secured only by real estate liens will be in accordance with the requirements of FmHA Instruction 427.1. However, the promissory note will be dated as of the date of execution instead of loan closing. Title clearance will not be required when real estate is taken as additional security only, or when a real estate lien is taken pursuant to §1901.107 (a) (2) (ii) of this Subpart. In either case the applicant will execute the lien instrument before the loan is closed.
- (f) Landlord's subordination of case rent claim. When a DE loan is made to a tenant and it is necessary for the landlord to subordinate his claim for the current year's rent, Form FmHA 441-5 "Subordination Agreement," or Form FmHA 441-17, "Certification of Obligation to Landlord," will be used.
 - (1) If Form FmHA 441-5 is used, the parenthetical statement with regard to the landlord's lien on crops will be deleted and the landlord will initial the deletion in the margin.
 - (2) Form FmHA 441-17 may be used instead of obtaining a subordination agreement from the landlord when
 - (i) The rent for the year has been paid, and
 - (ii) It appears that the applicant is not indebted to the landlord on other obligations and will not likely become indebted to him on such obligations during the lease year.
- (g) Form FmHA 441-7, "OL-EM and Other Credit Analysis." This form will not apply to DE loans.

(h) Preparing and distributing loan forms. The required forms for DE loans will be prepared and distributed in the same manner as for Operating loans. In addition, Form FmHA 427-8 and Form FmHA 422-1, when required, will be placed last in the docket.

(i) Review and approval or rejection of DE loan. The administrative determinations required in connection with the review and approval or rejection of a loan will be the determinations required by §1901.109 (b) of this Subpart.

(j) Submission of forms to Finance Office or local Agricultural Stabilization and Conservation Service (ASCS) office. Form FmHA 440-1 "Title" will be submitted to the Finance Office unless mail service has been disrupted by a military attack, or the Finance Office or the Disbursing Office of the Treasury Department cannot function because of damages from the attack. In this event, the County Supervisor will submit the originals of Forms FmHA 441-1 and FmHA 440-1 for each unclosed approved loan to the local office of ASCS. This will be done by a memorandum in the format of Exhibit B, showing the name of each applicant and the amount of his loan advance. An original and two copies of this memorandum will be sent to the ASCS County Office. A third copy will be retained in the FmHA County Office.

(1) The local ASCS Office will return the first copy of the transmittal memorandum to the County Supervisor with a draft on the Commodity Credit Corporation (CCC) payable to each applicant for the amount of each loan he or she is to receive. FmHA will reimburse CCC for all amounts advanced in this manner and costs incurred in connection with it. The County Supervisor, on receiving a CCC draft as described, will close the loan in the same manner as if a Treasury check had been received. For each such loan the County Supervisor will insert in Part V of the copy of Form FmHA 440-1 the following: "CCC draft dated _____."

(2) The local ASCS Office will retain the original Forms FmHA 440-1 and FmHA 441-1 until mail service and functions of the FmHA Finance Office and Treasury Disbursing Office have been restored. Immediately thereafter, the executive officer of the local ASCS Office will return the originals of Forms FmHA 440-1 and FmHA 441-1 to the County Supervisor requesting reimbursement for the amounts shown on these forms plus costs. In doing this, the local ASCS Office will deliver to the County Supervisor the original and two copies of a transmittal memorandum showing the name of each borrower and the amount of the loan advance for which reimbursement is requested. The County Supervisor will write across the bottom of the first copy of the memorandum covering

these loans the following:

"Received the above described loan documents this
_____ day of _____

FmHA County Supervisor

(3) The receipted copy will be given to the ASCS representative, and the original will be kept in the County Office. The County Supervisor will prepare Standard Form 1034, "Public Voucher for Purchases and Services other than Personal," and send it with the second copy of the ASCS memorandum, the original and one copy of Form FMHA 440-1, and Form FmHA 441-1 for each such loan to the Finance Office.

(4) After the voucher is paid, the Finance Office will return the original of Form FmHA 440-1 to the County Office. Each loan account established in this manner will bear interest from the date of the CCC draft covering the loan.

(k) Filing or recording security instruments. When facilities for recording or filing are temporarily unavailable because of a military attack, security instruments will be held in the County Office until these facilities become available.

\$1901.112 Servicing DE loans.

DE loans will be serviced in accordance with applicable policies for servicing FmHA Emergency (EM) loans except as follows:

(a) Cancellation of balances owed on Critical DE loans. Any Critical DE loan borrower who has paid on the loan all income received from the sale of critical enterprises financed with loan funds, less reasonable amounts for harvesting and marketing expenses as agreed to by the County Supervisor, and cash rent if the loan was made subject to the rent being paid with income, may apply for a cancellation of any remaining principal and interest deficit. This application will be made on a form prepared in the format of Exhibit C, "Application for Cancellation of Deficit on Critical Defense Emergency Loan Made for Production of Critical Crops, Livestock, or Livestock Products." The form will be prepared in an original and two copies. The original and one copy will be executed.

(1) Section A will contain a description of the note or notes evidencing the Critical DE loan involved and will report the acreages of critical crops or size of critical livestock enterprises financed, total production, total sales by units, harvesting and marketing expenses for each sale, the total amount paid for cash rent if the loan was made subject to this being done, and the total amount applied on the Critical DE loan account. The borrower will complete Section A but may seek the County Supervisor's assistance concerning description of the note(s) and balances owed.

(2) The County Supervisor will complete Section B recommending approval or rejection of the borrower's application and, in addition, attach a report supporting the recommendation, with observations and findings concerning the extent to which the borrower:

(i) Exercised due diligence, good husbandry, and proper management;

(ii) Applied all sales proceeds on his Critical DE loan, less reasonable harvesting and marketing expenses as agreed to by the County Supervisor; and

(iii) Applied any income paid for cash rent, if the loan was made subject to releases for this purpose.

(3) The County Committee will complete Section C to show the Committee's recommendation.

(i) If the committee does not recommend cancellation, the County Supervisor will inform the borrower by memorandum that the application has not been approved. In this event, all copies of the form will be kept in the County Office.

(ii) If the County Committee recommends cancellation, the County Supervisor will send the original and executed copy of the form to the State Director as soon as possible. The third copy will be kept in the borrower's file in the County Office.

(4) On receipt of a form containing a favorable recommendation by the County Committee, the State Director will complete Section D. If he approves the application, he will send the original and an

executed copy to the Finance Office. If he rejects the application, he will return the original to the County Supervisor who will inform the borrower of this rejection by memorandum.

(5) On receipt of the original and the executed copy of this form, the Finance Office will process the approved cancellation and return the executed copy stamped "Processed" to the County Supervisor. The County Supervisor will conform the County Office copy and send the processed copy to the borrower.

(b) Master record of cancellations. The County Supervisor will maintain a master record of cancellations showing the name of each borrower receiving a cancellation, the amount of the Critical DE loan, the amount of principal canceled, and the amount of interest canceled.

\$1901.113 State Instructions.

State Instructions to carry out the policies and procedures of this Subpart will be issued as necessary in the event of a national emergency and disseminated in whatever manner is available and as quickly as possible.

\$1901.114 Administrative changes.

The Administrator may waive or modify administrative provisions of this Subpart if it is determined necessary in order to provide assistance in an area. These changes will be in writing and issued for the specific purpose of adopting the program to meet special needs.

Attachments: Exhibits A, B, and C

(Reproduce Locally)

Exhibit A

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Critical Defense Emergency Loan Made for Production
of Critical Crops, Livestock, or Livestock Products

A. Borrower:

_____ (name) _____ (address)

B. Description of Note(s) Evidencing Critical Defense Emergency Loan Made to Borrower:

<u>Date</u>	<u>Amount</u>	<u>Repayment Schedule</u>
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

C. Critical Enterprises Being Financed With the Loan Described in Section B:

<u>Kind</u>	<u>Acres or Units</u>	<u>Estimated Production</u>	<u>Estimated Income</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

D. Borrower's Obligation:

In addition to the other obligations required under a Critical Defense Emergency loan, the borrower is expected to:

1. Exercise due diligence, good husbandry, and proper management in conducting the described critical enterprise(s).
2. Inform the FmHA County Supervisor at intervals during the period of the loan about the condition of his critical enterprise(s).
3. Report to the FmHA County Supervisor immediately upon the occurrence of any circumstance which might adversely affect the critical enterprise(s).

Exhibit A
Page 2

4. Report to the FmHA County Supervisor any reduction in the size of his planned critical enterprises(s) and refund for payment on the loan an amount determined by the County Supervisor not to be needed because of the reduction.
5. Account to the Farmers Home Administration for all income received from the described critical enterprise(s). Harvesting and marketing expenses in amounts agreed to by the County Supervisor may be paid with income. Also, if the loan is made subject to the payment of cash rent, the required amount may be paid with income. All remaining income must be paid on the Critical Defense Emergency loan account.

E. FmHA Obligation:

If the borrower accounts for all income from his critical enterprise(s), as described above, any remaining deficiency on the Critical Defense Emergency loan account will be cancelled by the Farmers Home Administration, upon application by the borrower, if recommended by the County Committee and approved by the State Director. Approval or disapproval by the State Director will be based on findings and determinations concerning whether the borrower used due diligence, good husbandry, and proper management in producing, harvesting, and marketing critical crops, livestock, or livestock products financed with a Critical Defense Emergency loan.

(Reproduce Locally)

Exhibit B

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

To: Mr. John Doe
Agricultural Stabilization
and Conservation Service
Doeville, Georgia

From: County Supervisor, FmHA
Doeville, Georgia

Subject: Submission of Loan Dockets

Enclosed are loan dockets of applicants for Defense Emergency loans, including the originals of Forms FmHA 440-1 and FmHA 441-1 for each, as follows:

Applicant

Amount of Loan

Please have a Commodity Credit Corporation draft prepared payable to each applicant in accordance with the above and deliver the drafts to us with the attached copy of this memorandum. The Farmers Home Administration will reimburse the Commodity Credit Corporation for the total amount of these loan advances plus costs as soon as possible.

(County Supervisor)

May 1, 1977

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(Reproduce Locally)

Exhibit C

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATIONAPPLICATION FOR CANCELLATION OF DEFICIT
ON CRITICAL DEFENSE EMERGENCY LOAN MADE
FOR PRODUCTION OF CRITICAL CROPS,
LIVESTOCK, OR LIVESTOCK PRODUCTS

STATE

COUNTY

NAME OF BORROWER

CASE NUMBER

ADDRESS OF BORROWER (INCLUDE ZIP CODE)

SECTION A

Below is an accounting for enterprises(s) of critical crops, livestock, or
livestock products conducted by me and financed with a Critical Defense
Emergency loan:

DESCRIPTION OF NOTE(S) EVIDENCING LOAN:

Date	Amount	Unpaid Balance	
		Principal	Interest
\$		\$	\$
\$		\$	\$

CRITICAL ENTERPRISE(S) FINANCED:

KIND	ACRES OR UNITS		PRODUCTION		INCOME	
	PLANNED	ACTUAL	PLANNED	ACTUAL	PLANNED	ACTUAL
					\$	\$
					\$	\$
					\$	\$

BORROWER'S REPORT ON USE OF INCOME FROM EACH DESCRIBED ENTERPRISE:

HARVESTING AND MARKETING		RENT	LOAN REPAYMENT
\$	\$	\$	
\$	\$	\$	
\$	\$	\$	

Position 2

Exhibit C
Page 2

BORROWER'S REPORT ON USE OF DUE DILIGENCE, GOOD HUSBANDRY, AND PROPER
MANAGEMENT IN CONDUCTING THE DESCRIBED ENTERPRISE(S):

BORROWER'S STATEMENT OF REASONS WHY THE DESCRIBED ENTERPRISE(S) DID NOT
PRODUCE SUFFICIENT INCOME TO PAY THE LOAN IN FULL:

APPLICATION BY BORROWER: Based on the information presented above, I hereby
apply for a cancellation of the balance I owe on the Critical Defense Emergency
loan(s) I received to finance the critical enterprise(s) described above.

(Date)

(Borrower)

SECTION B

RECOMMENDATION BY FmHA COUNTY SUPERVISOR: I recommend ☐ APPROVAL ☐ REJECTION
as described in the attached report.

(Date)

(FmHA County Supervisor)

SECTION C

RECOMMENDATION BY FmHA COUNTY COMMITTEE: We recommend ☐ APPROVAL ☐ REJECTION

May 1, 1977

CODE OF EMERGENCY FEDERAL REGULATIONS

17-50-37

Exhibit C
Page 3

SECTION D

ACTION BY STATE DIRECTOR: Cancellation of balance owed ☒ APPROVED ☐ REJECTED.

(Date)

(State Director)

SECTION E

ACTION BY FmHA FINANCE OFFICE: