

Grade	Minimum limits of—		Maximum Limits of—				
	Test weight per bushel (pounds)	Sound barley (percent)	Damaged kernels <sup>1</sup> (percent)	Heat damaged kernels (percent)	Foreign material (percent)	Broken kernels (percent)	Thin barley (percent)
U.S. No. 5 .....	36.0	75.0	10.0	3.0	5.0	28.0	75.0

U.S. Sample Grade:

U.S. Sample grade shall be barley that:

(a) Does not meet the requirements for the grades 1, 2, 3, 4, or 5; or

(b) Contains 8 or more stones or any number of stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of unknown foreign substance(s) or commonly recognized harmful or toxic substance(s), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 10 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1½ to 1¼ quarts of barley; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

<sup>1</sup> Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

Dated: April 8, 1996.

James R. Baker,  
Administrator.

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## Rural Housing Service

## Rural Business-Cooperative Service

## Rural Utilities Service

## Farm Service Agency

## 7 CFR Part 1980

RIN 0570-AA11

## Business and Industrial Loan Program—Audit Requirements

**AGENCIES:** Rural Housing Services, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) is amending the regulations for the Business and Industry (B&I) Loan Program. The action clarifies the requirements for annual financial statements and establishes thresholds for determining which borrowers will be required to provide audited statements.

**EFFECTIVE DATE:** April 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Bonnet, Commercial Loan Specialist, Rural Business-Cooperative Service, USDA, Ag Box 3221, Washington DC 20250-3221, Telephone (202) 720-1804.

## SUPPLEMENTARY INFORMATION:

### Classification

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

## Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.768, and is subject to intergovernmental consultation in accordance with Executive Order 12372, and as stated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

## Environmental Impact Statement

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

## Civil Justice

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

## Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

## Paperwork Reduction Act

The collection of information requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575-0029. This final rule does not impose any new information collection requirements from those approved by OMB.

## Background

This regulatory package is an Agency initiative to enhance the program by reducing the financial burden on small business borrowers of obtaining annual audits of their financial statements. The existing regulations require annual audited financial statements from all borrowers, except those with loans that have been paid down to no more than \$100,000 and to no more than two-thirds of the original balance and have

been current on repayments for at least 24 months. The cost of the audits can often be the difference between a profit and a loss for the year for small businesses. Many small businesses that need and want the assistance of the B&I guaranteed loan decide not to apply because they are unwilling to commit to the cost of an annual audit. Small businesses that have obtained B&I guaranteed loans sometimes become delinquent on the loans because the funds were spent on audits or refuse to honor their agreement to provide the audits.

#### Discussion of Comments

On March 28, 1994, a proposed rule was published in the Federal Register (59 FR 14371) to remove or allow the Agency to waive the requirement for annual audits for all loans of \$500,000 or less and for loans that have been outstanding and have provided audits for three years, have an unpaid balance not exceeding \$1 million, and are current on repayments. As proposed, all borrowers that did not provide audited financial statements would be required to provide financial statements compiled or reviewed by an independent certified public accountant or licensed public accountant. Guaranteed loan borrowers subject to OMB Circulars A-128 or A-133 would also have to comply with those Circulars. Insured (direct) B&I loans are governed by the requirements of 7 CFR 1942.

Eleven letters commenting on the proposed rule were received. Ten strongly supported the concept of relaxing audit requirements. None of the writers objected to the concept. Two writers recommended raising the threshold for requiring audits in connection with new loans from \$500,000 to \$1 million. Also, two writers recommended removing the proposed requirement that existing borrowers with loans not exceeding \$1 million must provide audited statements for three years before an exception to the audit requirements may be made. To deal with both of these issues, the final rule provides for only one threshold for either new or existing loans. The threshold for requiring audited statements will be a total Agency guaranteed loan balance exceeding \$1 million.

Two writers objected to the proposed requirement that audits be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) rather than Generally Accepted Accounting Principles (GAAP). The Agency has determined that since most businesses already use

GAAP and there is no reason to require audits be done two different ways, GAAP will be used. That requirement is changed in the final rule.

One writer recommended the language be revised to make it clear that the monetary threshold is referring to the total principal plus interest balance at year end. This suggestion has been adopted.

One writer objected to the use of the term "quality" in reference to whether financial statements are audited, reviewed, or compiled. The phrasing has been revised in the final rule to eliminate that word usage.

One writer questioned how an individual borrower could be expected to know when the Agency wanted audited or unaudited financial statements in excess of the minimum requirements. We believe it is sufficiently clear that the Agency will inform the lender and borrower of the requirements being imposed for each loan. The final rule is not different from the proposed rule in this regard.

One writer suggested the specific threshold for audits to be performed under OMB Circulars A-128 and A-133 be removed because the threshold set by OMB might change. This suggestion has been adopted.

#### List of Subjects in 7 CFR part 1980

Loan programs—Business, Rural areas, Rural development assistance.

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

#### PART 1980—GENERAL

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

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

#### Subpart E—Business and Industrial Loan Program

2. Section 1980.445 is added to read as follows:

##### § 1980.445 Periodic financial statements and audits.

All borrowers will be required to submit periodic financial statements to the lender. Lenders must forward copies of the financial statements and the lender's analysis of the statements to the Agency.

(a) *Audited financial statements.* Except as provided in paragraphs (d) and (e) of this section, all borrowers with a total principal and interest loan balance for loans under this subpart, at the end of the borrower's fiscal year of more than \$1 million, must submit annual audited financial statements.

The audit must be performed in accordance with generally accepted accounting principles (GAAP). In addition, the audits are also to be performed in accordance with appropriate Office of Management and Budget (OMB) circulars and any Agency requirements specified in this subpart.

(b) *Unaudited financial statements.*

For borrowers with a loan balance (principal plus interest at year-end) of \$1 million or less, the Agency will require annual financial statements which may be statements compiled or reviewed by an accountant qualified in accordance with the publication "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" instead of audited financial statements.

(c) *Internal financial statements.* The Agency may require submission of financial statements prepared by the borrower at whatever frequency is determined necessary to adequately monitor the loan. Quarterly financial statements will be required on new business enterprises or those needing close monitoring.

(d) *Minimum requirements.* This section sets out minimum requirements for audited and unaudited financial statements to be submitted to the Agency. If specific circumstances warrant, the Agency may require audited financial statements or independent unaudited financial statements in excess of the minimum requirements. For example, loans that depend heavily on inventory and accounts receivable for collateral will normally be audited, regardless of the size of the loan. Nothing in this section shall be considered an impediment to the lender requiring financial statements more frequently than required by the Agency or requiring audited financial statements when the Agency would accept unaudited financial statements.

(e) *Public bodies and nonprofit corporations.* Notwithstanding other provisions of this section, any public body or nonprofit corporation that receives a guarantee of a loan that meets the thresholds established by OMB Circular A-128 or A-133 for coverage under such circular, must provide an audit in accordance with the applicable OMB Circular A-128 or A-133 for the fiscal year of the borrower in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit, in accordance with the applicable circular, will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in

compliance with OMB Circular A-128 or A-133 will be considered adequate to meet the requirements of this section for that year. OMB Circulars are available from the Office of Management and Budget, EOP Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

3. Section 1980.451 is amended by revising paragraph (i)(13) introductory text to read as follows:

**§ 1980.451 Filing and processing applications.**

\* \* \* \* \*

(i)\* \* \*

(13) Proposed loan agreement. (See paragraph VII of Form FmHA 449-35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include the Agency requirements as set forth in the Form FmHA 449-14 including the requirements for periodic financial statements in accordance with § 1980.445. The loan agreement must also include, but is not limited to, the following:

\* \* \* \* \*

**§ 1980.454 [Amended]**

4. Section 1980.454 is amended by removing and reserving ADMINISTRATIVE A. 1.

**§ 1980.469 [Amended]**

5. Section 1980.469 is amended by removing and reserving ADMINISTRATIVE c. 1.

Dated: January 30, 1996.

Jill L. Thompson,

*Under Secretary, Rural Economic and Community Development.*

[FR Doc. 96-10144 Filed 4-25-96; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 207, 220, 221, and 224

[Regulations G, T, U, and X]

#### Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; determination of applicability of regulations.

**SUMMARY:** The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain

Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

**EFFECTIVE DATE:** May 13, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452-2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:** Listed below are the deletions from and additions to the Board's OTC List, which was last published on January 29, 1996 (61 FR 2667), and became effective February 12, 1996. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the deletions from and additions to the Board's Foreign List, which was last published on January 29, 1996 (61 FR 2667), and became effective February 12, 1996. The Foreign List includes those foreign securities that meet the criteria in section 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic

margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

**Public Comment and Deferred Effective Date**

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

#### List of Subjects

##### 12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.