

Sect. of regulations (A)	Title (B)	Form No. (if any) (C)	Estimated No. of respondents (D)	Report filed annually (E)	Total annual responses (d) × (e) (F)	Est. No. of man-hrs. per response (G)	Est. total manhours (f) × (g) (H)
Reporting Requirements—No Forms							
1951.889(d)	Transferee financial statement	Written	2	1	2	.5	1
Form Approved with this Docket							
1951.883(a)(2)	IRP Lending Activity Report IRP borrower RDLF borrower	1951-4					
			10	4	40	20	800
			26	2	52	20	1040
Reporting Requirements Under Other Numbers							
1951.872(b)	Request for Environmental Information	1940-20 (0575-0094)			1494		≈2,726

¹ Docket totals.
² Total hours.

PART 1955—PROPERTY MANAGEMENT

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

SOURCE: 50 FR 23904, June 7, 1985, unless otherwise noted.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of loans to individuals and to organizations as identified in §1955.3 of this subpart. It pertains to the Multi-Family Housing (MFH) and Community Facility (CF) programs of the Rural Housing Service (RHS), and direct programs of the Rural Business-Cooperative Service (RBS). Guaranteed RBS loans are liquidated upon direction from the Deputy Administrator, Business Programs, RBS. This subpart

RHS, RBS, RUS, FSA, USDA

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does not apply to Farm Service Agency, Farm Loan Programs, to RHS single family housing loans, or to CF loans sold without insurance in the private sector. These CF loans will be serviced in the private sector, and future revisions to this subpart no longer apply to such loans. This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Programs of RHS. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

[72 FR 55019, Sept. 28, 2007, as amended at 72 FR 64123, Nov. 15, 2007]

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or its successor agency under Public Law 103-354 or by foreclosure as outlined in this subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA or its successor agency under Public Law 103-354 in accordance with applicable portions of §1955.10 of this subpart. Nonprogram (NP) loans, except for Community and Business Programs, will be liquidated as provided in subpart J of part 1951 of this chapter, unless specifically referenced in this subpart.

[51 FR 4138, Feb. 3, 1986, as amended at 53 FR 27826, July 25, 1988; 58 FR 52652, Oct. 12, 1993]

§ 1955.3 Definitions.

As used in this subpart, the following definitions apply:

Closing agent. An attorney or title insurance company which is approved as a loan closing agent in accordance with subpart B of part 1927 of this chapter.

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA or its successor agency under Public Law 103-354.

Farmer Programs loans. The term "Farmer Program loans" (FP) refers to the following types of loans: Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing Loans for farm service buildings (RHF).

Government. The United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354), U.S. Department of Agriculture; used interchangeably herein with "FmHA or its successor agency under Public Law 103-354."

Homestead protection. The Farmer Programs borrower-owner's right to lease with an option to purchase the principal residence located on or off the farm and up to 10 acres of adjoining land possessed and occupied by the borrower-owner, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead.

Interest credit. The terms "interest credit" and "interest credit assistance," as they relate to Single Family Housing (SFH) loans, are interchangeable with the term "payment assistance." Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

Loans to individuals. Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing loans for farm

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service buildings (RHF), whether to individuals or entities, referred to in this subpart as Farmer Programs (FP) loans; and Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Section 502 and 504 loans.

Loans to Native Americans. Farmer Program loans secured by real estate located within the boundaries of a federally recognized Indian reservation. The Native American borrower-owner is defined as the party who pledged real estate as collateral for an FP loan and is the tribe or a member of the tribe with control over the reservation.

Loans to organizations. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); insured Business and Industrial (B&I) both to individuals and groups; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); loans to associations for Irrigation and Drainage (I&D) and other Soil and Water conservation measures; loans to Indian Tribes and Tribal Corporations; Shift-In-Land Use (Grazing Association); Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this subpart collectively as Multiple-family Housing (MFH) loans.

Market value. The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

Nonrecoverable cost is a contractual or noncontractual program loan cost expense not chargeable to a borrower, property account, or part of the loan subsidy.

OGC. The Office of the General Counsel, U.S. Department of Agriculture; refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

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Prior lien. A security instrument (such as a mortgage or deed of trust) or a judgment which was of public record before the FmHA or its successor agency under Public Law 103-354 security instrument(s) as well as real estate taxes or assessments which are or will become a lien against the property which is superior to FmHA or its successor agency under Public Law 103-354's security instrument(s).

Recoverable cost is a contractual or noncontractual program loan cost expense chargeable to a borrower, property account, or part of the loan subsidy.

Servicing official. For loans to individuals as defined in paragraph (d) of this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For RDLF and IRP, the servicing official is the Director, Business and Industry Division. For NNC, the servicing official is the Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45782, Nov. 1, 1985; 52 FR 26138, July 13, 1987; 53 FR 27826, July 25, 1988; 53 FR 30664, Aug. 15, 1988; 53 FR 35762, Sept. 14, 1988; 56 FR 15821, Apr. 18, 1991; 56 FR 29402, June 27, 1991; 56 FR 67484, Dec. 31, 1991; 58 FR 68723, Dec. 29, 1993; 60 FR 55147, Oct. 27, 1995; 62 FR 44395, Aug. 21, 1997; 63 FR 41716, Aug. 5, 1998]

§ 1955.4 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) Except as provided in §1900.6(c) of this chapter, any authority in this subpart which is specifically delegated to the Administrator or to an Deputy Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director is authorized to redelegate, in writing, any authority delegated to the State Director in this subpart to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in §1955.115(a)(2) of this subpart

may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(c) The District Director is authorized to redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist determined by the District Director to be qualified; except the authority to approve or disapprove foreclosure as outlined in §1955.15(a)(1) of this subpart may not be redelegated. However, a duly designated Acting District Director may approve or disapprove foreclosure. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor is authorized to redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7, or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska and Area Supervisors in the Western Pacific Territories and American Samoa.

(e) The monetary limitations on acceptance of voluntary conveyance as provided in §1955.10(a) of this subpart may *not* be redelegated from a higher-level official to a lower level official.

[53 FR 27826, July 25, 1988, as amended at 54 FR 6875, Feb. 15, 1989; 59 FR 43441, Aug. 24, 1994; 62 FR 44395, Aug. 21, 1997]

§ 1955.5 General actions.

(a) *Assignment of notes to FmHA or its successor agency under Public Law 103-354.* When liquidation action is approved and the insured note is not held in the County or District Office, the approval official will request the Finance Office to purchase the note and forward it to the appropriate office. Voluntary conveyance may be closed pending receipt of the note(s), and foreclosure may also be processed pending receipt of the note(s), unless the original note is required in connection with the foreclosure action.

(b) *Execution of documents.* (1) After liquidation of loans to individuals has been approved by the appropriate official, the County Supervisor is author-

ized to execute all necessary forms and documents except notices of acceleration required to complete transactions covered by this subpart.

(2) After liquidation of loans to organizations has been approved by the appropriate official, the District Director is authorized to execute all forms and documents for completion of the liquidation except:

(i) Notice of acceleration; or

(ii) Other form or document which specifically required State or National Office approval because of monetary limits or policy statement established elsewhere in this subpart.

(c) *Unused loan funds.* (1) Funds remaining in a supervised bank account will be handed in accordance with §1902.15 of subpart A of part 1902 of this chapter before a voluntary conveyance or foreclosure is processed.

(2) Funds remaining in a construction or other account will be applied to the borrower's FmHA or its successor agency under Public Law 103-354 accounts.

(d) *Payment of costs.* Costs related to liquidation of a loan or acquisition of property will be paid according to FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office) as either a recoverable or non-recoverable cost as defined in §1955.3 of this subpart.

(e) *Escrow funds.* Any funds remaining in the borrower's escrow account at the time of liquidation by voluntary conveyance or foreclosure are non-refundable and will be credited to the borrower's loan account.

[50 FR 23904, June 7, 1985, as amended at 56 FR 6953, Feb. 21, 1991, 57 FR 36590, Aug. 14, 1992]

§§ 1955.6-1955.8 [Reserved]

§ 1955.9 Requirements for voluntary conveyance of real property located within a federally recognized Indian reservation owned by a Native American borrower-owner.

(a) The borrower-owner is a member of the tribe that has jurisdiction over the reservation in which the real property is located. An Indian tribe may also meet the borrower-owner criterion

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if it is indebted for Farm Credit Programs loans.

(b) A voluntary conveyance will be accepted only after all preacquisition primary and preservation servicing actions have been considered in accordance with subpart S of part 1951 of this chapter.

(c) When all servicing actions have been considered under subpart S of part 1951 of this chapter and a positive outcome cannot be achieved, the following additional actions are to be taken:

(1) The county official will notify the Native American borrower-owner and the tribe by certified mail, return receipt requested, and by regular mail if the certified mail is not received, that:

(i) The borrower-owner may convey the real estate security to FSA and FSA will consider acceptance of the property into inventory in accordance with paragraph (d) of this section.

(ii) The borrower-owner must inform FSA within 60 days from receipt of this notice of the borrower and owner's decision to deed the property to FSA;

(iii) The borrower-owner has the opportunity to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located, or counsel, to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under Agency regulations;

(2) If the borrower-owner does not voluntarily deed the property to FSA, not later than 30 days before the foreclosure sale, FSA will provide the Native American borrower-owner with the following options:

(i) The Native American borrower-owner may require FSA to assign the loan and security instruments to the Secretary of the Interior. If the Secretary of the Interior agrees to such an assignment, FSA will be released from all further responsibility for collection of any amounts with regard to the loans secured by the real property.

(ii) The Native American borrower-owner may require FSA to complete a transfer and assumption of the loan to the tribe having jurisdiction over the reservation in which the real property is located if the tribe agrees to the assumption. If the tribe assumes the

loans, the following actions shall occur:

(A) FSA shall not foreclose the loan because of any default that occurred before the date of the assumption.

(B) The assumed loan shall be for the lesser of the outstanding principal and interest of the loan or the fair market value of the property as determined by an appraisal.

(C) The assumed loan shall be treated as though it is a regular Indian Land Acquisition Loan made in accordance with subpart N of part 1823 of this chapter.

(3) If a Native American borrower-owner does not voluntarily convey the real property to FSA, not less than 30 days before a foreclosure sale of the property, FSA will provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of the following:

(i) The sale;

(ii) The fair market value of the property; and

(iii) The ability of the Native American borrower-owner to require the assignment of the loan and security instruments either to the Secretary of the Interior or the tribe (and the consequences of either action) as provided in § 1955.9(c)(2).

(4) FSA will accept the offer of voluntary conveyance of the property unless a hazardous substance, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is located on the property which will require FSA to take remedial action to protect human health or the environment if the property is taken into inventory. In this case, a voluntary conveyance will be accepted only if FSA determines that it is in the best interests of the Government to acquire title to the property.

(d) When determining whether to accept a voluntary conveyance of a Native American borrower-owner's real property, the county official must consider:

(1) The cost of cleaning or mitigating the effects if a hazardous substance is found on the property. A deduction equal to the amount of the cost of a hazardous waste clean-up will be made

to the fair market value of the property to determine if it is in the best interest of the Government to accept title to the property. FSA will accept the property if clear title can be obtained and if the value of the property after removal of hazardous substances exceeds the cost of hazardous waste clean-up.

(2) If the property is located within the boundaries of a federally recognized Indian reservation, and is owned by a member of the tribe with jurisdiction over the reservation, FSA will credit the Native American borrower-owner's account based on the fair market value of the property or the FSA debt against the property, whichever is greater.

[62 FR 44395, Aug. 21, 1997]

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA or its successor agency under Public Law 103-354 will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA or its successor agency under Public Law 103-354 should advise the borrower, in writing, that there is equity in the property before accepting an offer to voluntarily convey. If FmHA or its successor agency under Public Law 103-354 receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. FmHA or its successor agency under Public Law 103-354 should refuse the voluntary conveyance, if the FmHA or its successor agency under Public Law 103-354 lien has neither present nor prospective value or recovery of the value would be unlikely or uneconomical. Instead, for loans to individuals, FmHA or its successor agency under Public Law 103-354 should release its lien as valueless in accordance with § 1965.25(d) of subpart A of part 1965 of this chapter or § 1965.118(c) of subpart C of this chapter, as appropriate. For non-FP bor-

rowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent exhibit A with attachments 1 and 2 of subpart S of 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. Exhibit G of this subpart will be used to determine whether or not to accept an FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA or its successor agency under Public Law 103-354 may recover its investment in return for the acceptance of the voluntary conveyance. In addition, prior to acceptance of a voluntary conveyance of farm real property that collateralizes an FP loan, the County Supervisor will remind the borrower-owner of possible deed restrictions and easement that may be placed on the property in the event the property contains wetlands, floodplains, historical sites and/or other federally protected environmental resources as set forth in exhibit M of subpart G of part 1940 of this chapter and § 1955.137 of subpart C of part 1955 of this chapter. When it is determined that all conditions of § 1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter will be sent prior to accepting a voluntary conveyance. Those borrowers who are indebted for nonprogram (NP) loans who

wish to voluntarily convey property will not be sent exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter. For Farmer Program borrowers who have received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing option for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the nonfarm tract. For newly constructed SFH properties with major construction defects, see subpart F of part 1924 of this chapter.

(a) *Authority*—(1) *Loans to individuals*—(i) *SFH loans*. The County Supervisor is authorized to accept voluntary conveyances regardless of amount of indebtedness.

(ii) [Reserved]

(2) *Loans to organizations*. (i) The State Director is authorized to approve voluntary conveyance of property securing Farmer Programs and EOC loans regardless of amount of indebtedness.

(ii) The State Director is authorized to approve voluntary conveyance of property securing MFH loans if the total indebtedness against the property, including prior and junior liens, does not exceed his/her approval authority for the type loan involved. Loan approval authorities are outlined in exhibits A through E of FmHA or its successor agency under Public Law 103-354 Instruction 1901-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2)(i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance offer. Submissions will include the case file; OGC's opinion on settling any other liens in-

volved; a statement of essential facts; and recommendations of the State Director and Program Chief. Submissions are to be addressed to the Administrator, ATTN: (appropriate program division.)

(b) *Forms and documents*. All forms and documents in connection with voluntary conveyance will be prepared and distributed in accordance with the respective FMI or applicable OGC instructions. For loans to individuals when the County Supervisor has approval authority, the facts will be documented in the running record of the borrower's case file. For all other loans, the servicing official will submit the voluntary conveyance offer, the case file and a narrative report to the appropriate approval official.

(c) *Liens against the property other than FmHA or its successor agency under Public Law 103-354 liens*—(1) *Prior liens*.

(i) The approval official will determine whether or not prior liens will be paid. Normally, the Government will pay prior liens in full prior to acquisition if:

(A) A substantial recovery on the Government's investment plus the amount of the prior lien(s) can be obtained; and

(B) The holder of the prior lien(s) objects to the Government accepting voluntary conveyance subject to the prior lien(s), if consent of the prior lienholder(s) is required.

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with §1955.67 of subpart B of part 1955 of this chapter.

(2) *Junior liens*. The borrower must satisfy junior liens on the property (except FmHA or its successor agency under Public Law 103-354 liens) and pay real estate taxes or assessments which are or will become a lien on the property. However, if the borrower is unable or unwilling to do so, settlement of the liens may be made by FmHA or its successor agency under Public Law 103-354 if settlement would be in the best interest of the Government, considering all factors such as length of time required to foreclose, vandalism or other deterioration of the property

which might occur, and effect on management of a MFH project and its tenants. An FmHA or its successor agency under Public Law 103-354 official will contact junior lienholders, negotiate the most favorable settlement possible, and determine whether it is in the Government's best interest to settle the junior liens and accept the voluntary conveyance.

(i) For loans to individuals, the approval official is authorized to settle junior liens in the smallest amount possible, but not to exceed an aggregate amount of \$1,000 in each SFH case or \$5,000 for other type loans. For junior liens in greater amounts when the approval official is the County Supervisor or District Director, prior authorization must be obtained from the State Director.

(ii) For loans to organizations, the State Director will determine whether or not junior liens will be settled and voluntary conveyance accepted.

(3) *Payment of liens.* A lien to be settled in accordance with paragraph (c)(1)(i) or (c)(2) of this section will be paid as outlined in §1955.5(d) of this subpart and charged to the borrower's account as a recoverable cost.

(d) *Offer of voluntary conveyance.* An offer of voluntary conveyance will consist of the following:

(1) Form FmHA or its successor agency under Public Law 103-354 1955-1, "Offer to Convey Security."

(2) Warranty deed, or other deed approved by OGC to comply with State Laws. The deed will not be recorded until it is determined the voluntary conveyance will be accepted. At the time of the offer, the borrowers will be informed that the conveyance will not be accepted until the property has been appraised and a lien search has been obtained. If the voluntary conveyance is not accepted, the deed and Form FmHA or its successor agency under Public Law 103-354 1955-1, properly executed, will be returned to the borrower along with a memorandum stating the reason(s) for nonacceptance.

(3) A current financial statement containing information similar to that required to complete Forms FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law

103-354 Services" or FmHA or its successor agency under Public Law 103-354 442-3, "Balance Sheet," and information on present income and potential earning ability. Exception for SFH loans: FmHA or its successor agency under Public Law 103-354 requires a budget and/or financial statement and, if necessary to discover suspected undisclosed assets, a search of public records, only when the value of the security property may be less than the debt.

(4) For organization borrowers, a duly-adopted Resolution by the governing body authorizing the conveyance and certified by the attesting official with the corporate seal affixed. The Resolution will indicate which officials are authorized to execute the offer to convey and the deed on behalf of the borrower. If shareholder approval is necessary, the Resolution will specifically recite that shareholder approval has been obtained.

(5) If water rights, mineral rights, development rights, or other use rights are not fully covered in the deed, the advice of OGC will be obtained and appropriate documents to transfer rights to the Government will be obtained before the voluntary conveyance is accepted. The documents will be recorded, if necessary, in connection with closing the conveyance.

(6) If property is under lease, an assignment of the lease to the Government will be obtained with the effective date being the date the voluntary conveyance is closed. If an oral lease is in force, it will be reduced to writing and assigned to the Government.

(7) The borrower may be required to provide a title insurance policy or a final title opinion from a designated attorney when the State Director determines it is necessary to protect the Government's interest. Such title insurance policy or final title opinion will show title vested to the Government subject only to exceptions and liens approved by the County Supervisor.

(8) Farmer program loan borrowers who voluntarily convey after receiving the appropriate loan servicing notice(s) contained in the attachments of exhibit A of subpart S of part 1951 of this chapter, must properly complete and

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return the acknowledgement form sent with the notice.

(9) For MFH loans, assignment of Housing Assistance Payments (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by OGC that the Agency has title to the property. After a voluntary conveyance, the Agency may transfer Rental Assistance in accordance with 7 CFR part 3560, subpart F.

(e) *Appraisal of property.* After an offer of voluntary conveyance, but before acceptance by FmHA or its successor agency under Public Law 103–354, an appraisal of the property will be made to establish the current market value of the property. If a qualified FmHA or its successor agency under Public Law 103–354 appraiser is not available to appraise property securing a loan other than MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA or its successor agency under Public Law 103–354 in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office). For property securing MFH, prior authorization must be obtained by the Assistant Administrator, Housing, to secure an appraisal from a source outside FmHA or its successor agency under Public Law 103–354. For property securing FP loan(s), the contract appraiser must complete the appraisal in accordance with §761.7 of this title for FP property, or subpart C of part 1922 for Single Family Housing property. Also, the appraiser must meet at least one of the following qualifications:

(1) Certification by a National or State Appraisal Society.

(2) If a certified appraiser is not available, the appraiser may be one who meets the criteria for certification in a National or State Appraisal Society.

(3) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser’s qualifications.

(f) *Processing offer to convey security and acceptance by FmHA or its successor agency under Public Law 103–354.* If a borrower has both SFH and other type

loans, the portion of this paragraph dealing with the loan(s) other than SFH will be followed.

(1) *SFH loans.* FmHA or its successor agency under Public Law 103–354 does not solicit or encourage conveyance of SFH security property to the Government and will consider a borrower’s offer to convey by deed in lieu of foreclosure only after the debt is accelerated and when it is in the Government’s interest. Upon receipt of an offer to convey, the servicing official will remind the borrower of provisions for voluntary liquidation under 7 CFR part 3550, and the consequences of a conveyance by deed in lieu of foreclosure as follows: All costs related to the conveyance which FmHA or its successor agency under Public Law 103–354 pays will be added to the debt; a credit equal to the market value of the property, as determined by FmHA or its successor agency under Public Law 103–354, less prior liens, will be applied to the debt; and if the credit does not satisfy the debt, the borrower will not automatically be released of liability. The unsatisfied debt, after acceleration under §1955.10(h)(5) of this subpart, may be settled according to subpart B of part 1956 of this chapter; however, a deficiency judgment will not be pursued when the borrower was granted a moratorium if the borrower faithfully tried to meet loan obligations. The conveyance is processed as follows:

(i) Before accepting the offer, the County Supervisor will transmit the deed to a closing agent requesting a title search covering the period of time since the latest title opinion in the case file. The same agent who closed the loan should be used, if possible; otherwise one will be selected from the approved list of closing agents, taking care that cases are distributed fairly among approved agents. The closing agent may be instructed that the County Supervisor considers the voluntary conveyance offer conditionally approved, and the closing agent may record the deed after the title search if there are no liens against the property other than:

(A) The FmHA or its successor agency under Public Law 103–354 lien(s);

(B) Prior liens when FmHA or its successor agency under Public Law 103–

354 has advised the closing agent that title will be taken subject to the prior lien(s) or has told the closing agent that the prior lien(s) will be handled in accordance with §1955.10(c)(1) of this subpart; and/or

(C) Real estate taxes and/or assessments which must be paid when title to the property is transferred.

(ii) If junior liens are discovered, the closing agent will be requested to provide FmHA or its successor agency under Public Law 103-354 with the lienholder's name, amount of lien, date recorded, and the recording information (recording office, book and page), return the unrecorded deed to FmHA or its successor agency under Public Law 103-354, and await further instructions from FmHA or its successor agency under Public Law 103-354. In such cases, the County Supervisor will proceed in accordance with §1955.10(c)(2) of this subpart. If agreement has been reached with the lienholder(s) for settling the junior lien(s) in order to accept the conveyance, the deed will be returned to the closing agent for a title update and recording.

(iii) The closing agent will be requested to provide a certification of title to FmHA or its successor agency under Public Law 103-354 after recordation of the deed. A certification of title in a statement that fee title is vested in the Government subject only to the FmHA or its successor agency under Public Law 103-354 lien(s) and prior liens previously approved by FmHA or its successor agency under Public Law 103-354. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with §1955.10(g) of this subpart.

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* If the Agency indebtedness plus any prior liens exceeds the market value of the property, the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior liens. Debt settlement will be considered in accordance with subpart B of part 1956 of this chapter.

(i) *Crediting accounts.* The Agency will credit an account by an amount equal to the market value less prior liens, unless the borrower is Native

American. Native American borrower-owners will be credited with the fair market value or the Agency debt against the property, whichever is greater, provided:

(A) The borrower-owner is a member of a tribe or the tribe, and

(B) The property is located within the confines of a federally recognized Indian reservation.

(ii) *Agency approval.* The same procedure outlined in paragraphs (f)(1)(i) through (f)(1)(iii) of this section will be followed for approving the voluntary conveyance. The conveyance will be accepted in full satisfaction of the indebtedness unless the market value of the property to be conveyed is less than the total of Government indebtedness and prior liens, and the borrower has agreed to accept a credit in the amount of the market value of the security property less prior liens, if any.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, and the market value of the property being conveyed (less prior liens, if any) is less than the Government debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the debt.

(g) *Closing of conveyance.* (1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA or its successor agency under Public Law 103-354, a certification of title is received from the closing agent that title is vested in the Government with no outstanding encumbrances other than the FmHA or its successor agency under Public Law 103-354 lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the case to verify that it was closed properly. The property will be assigned an ID number and entered into the Acquired Property Tracking System through the Automated Discrepancy Processing System (ADPS) terminal in the County Office.

(2) When costs incident to the completion of the transaction are to be paid by the Government, the servicing official will prepare and process the

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necessary documents as outlined in §1955.5(d) of this subpart and the costs will be charged to the borrower's account as recoverable costs. This includes taxes and assessments, water charges which protect the right to receive water, other liens, closing agent's fee, and any other costs related to the conveyance.

(h) *Actions to be taken after closing conveyance.* (1) When the FmHA or its successor agency under Public Law 103-354 account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability," and the statement must be signed by the servicing official.

(2) When the FmHA or its successor agency under Public Law 103-354 account is not satisfied and the borrower is not released from liability, the note(s) will be retained by FmHA or its successor agency under Public Law 103-354.

(3) The servicing official will release the lien(s) of record, indicating that the debt was satisfied by surrender of security or that the lien is released but the debt not satisfied, whichever is applicable. If the lien is to be released but the debt not satisfied, OGC will provide the type of instrument required to comply with applicable State laws.

(4) After release of the lien(s), the servicing official will return the following to the borrower:

(i) If borrower is released from liability, the satisfied note(s) and a copy of Form FmHA or its successor agency under Public Law 103-354 1955-1 showing acceptance by the Government; or

(ii) If borrower is not released from liability, a copy of Form FmHA or its successor agency under Public Law 103-354 1955-1 showing acceptance by the Government.

(5) When the FmHA or its successor agency under Public Law 103-354 account is not satisfied and the borrower not released from liability, the account balance, after deducting the "as is" market value and prior liens, if any, will be accelerated utilizing exhibit F of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office).

(6) For MFH loans, the State Director will cancel any interest credit and

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suspend any rental assistance. These actions will be accomplished by notifying the Finance Office unit which handles MFH accounts. In the interim the tenants will continue rental payments in accordance with their lease. Tenants will be informed of the pending liquidation action and the possible consequences of the action. If the project is to be removed from the Rural Development program, a minimum of 180 days' notice to the tenants is required. Letters of Priority Entitlement must be made available to any tenants that will be displaced.

(7) Actions outlined in §1955.18 of this subpart will be taken, as applicable.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45782, Nov. 1, 1985; 69 FR 69105, Nov. 26, 2004]

§1955.11 Conveyance of property to FmHA or its successor agency under Public Law 103-354 by trustee in bankruptcy.

(a) *Authority.* With the advice of OGC (and prior approval of the National Office for MFH, Community Programs, and insured B&I loans), the State Director within his/her authority is authorized to accept a conveyance of property to the Government by the Trustee in Bankruptcy, provided:

(1) The Bankruptcy Court has approved the conveyance;

(2) The conveyance will permit a substantial recovery on the FmHA or its successor agency under Public Law 103-354 debt; and

(3) FmHA or its successor agency under Public Law 103-354 will acquire title free of all liens and encumbrances except FmHA or its successor agency under Public Law 103-354 liens.

(b) *Fees and deed.* (1) FmHA or its successor agency under Public Law 103-354 may pay any necessary and proper fees approved by the bankruptcy court in connection with the conveyance. Before paying a fee to a trustee for a Trustee's Deed in excess of \$300 for any loan type(s) other than Farmer Programs or \$1,000 for Farmer Program loans, prior approval of the Administrator must be obtained. The State Director will process the necessary documents as outlined in §1955.5(d) of this subpart for payment of fees as recoverable costs.

(2) Conveyance may be by Trustee's Deed instead of a warranty deed. If upon advice of OGC it is determined a deed from any other person or entity (including the borrower) is necessary to obtain clear title, a deed from such person or entity will be obtained.

(c) *Acceptance.* The conveyance will be accepted for an amount of credit to the borrower's FmHA or its successor agency under Public Law 103-354 account(s) as set forth in §1955.18(e)(4) of this subpart.

(d) *Reporting.* Acquisition of property under this section will be reported in accordance with §1955.18(a) of this subpart.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27827, July 25, 1988]

§ 1955.12 Acquisition of property which served as security for a loan guarantee by FmHA or its successor agency under Public Law 103-354 or at sale by another lienholder, bankruptcy trustee, or taxing authority.

When the servicing regulations for the type of loan(s) involved permit FmHA or its successor agency under Public Law 103-354 to acquire property by one of these methods, the acquisition will be reported in accordance with §1955.18(a) of this subpart.

§ 1955.13 Acquisition of property by exercise of Government redemption rights.

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. For Farmer Program loans, the County Supervisor will document the determination on exhibit G of this subpart. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will

be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption under Federal law (28 U.S.C. 2410) may be waived without consideration. If a State law right of redemption exists and may be sold, it will not be disposed of for less than its value.

[53 FR 35762, Sept. 14, 1988]

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§ 1955.15 Foreclosure by the Government of loans secured by real estate.

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; when either a net recovery can be made or when failure to foreclose would adversely affect FmHA or its successor agency under Public Law 103-354 programs in the area. Also, in Farmer Program cases (except graduation cases under subpart F of part 1951 of this chapter), the borrower must have received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, and any appeal must have been concluded. For real property located within the confines of a federally recognized Indian reservation and owned by a Native American borrower, proper notice of voluntary conveyance must be given as outlined in §1955.9 (c)(1) of this subpart.

(a) *Authority*—(1) *Loans to individuals.* The District Director is authorized to approve or disapprove foreclosure and accelerate the account.

(2) *Loans to organizations.* (i) The State Director or District Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA or its successor agency under Public Law 103-354 secured debt does not exceed their respective loan approval authority. The State Director is authorized to approve or disapprove foreclosure of I&D, Shift-In-Land-Use (Grazing Association),

loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

(ii) For all other organization loans, foreclosure will not be initiated without prior approval of the Administrator. The State Director will obtain OGC's opinion on the steps necessary to foreclose the loan, and forward the appropriate problem case report, a statement of essential facts, his/her recommendation, a copy of the OGC opinion, and the borrower's case file to the Administrator, Attn: Assistant Administrator (appropriate loan division) with a request for authorization to initiate foreclosure.

(b) *Problem case report.* When foreclosure is recommended, the servicing official will prepare Form FmHA or its successor agency under Public Law 103-354 1955-2 for Farmer Program or SFH loans, exhibit A to this subpart for MFH loans, or exhibit A of FmHA or its successor agency under Public Law 103-354 Instruction 1951-E (available in any FmHA or its successor agency under Public Law 103-354 office) for other organization loans. If chattel security is also involved, Forms FmHA or its successor agency under Public Law 103-354 455-1, "Request for Legal Action"; 455-2, "Evidence of Conversion"; and 455-22, "Information for Litigation"; as applicable to the case, will be prepared in accordance with the respective FMIs and made a part of the problem case submission. A statement must be included by the servicing official in the narrative that all servicing actions required by FmHA or its successor agency under Public Law 103-354 loan servicing regulations have been taken and all required notices given to the borrower.

(1) *Appraisal.* The market value of the property may be estimated in completing the problem case report unless there are one or more prior liens other than current-year real estate taxes. Where such prior liens are involved, an appraisal report reflecting market value in existing condition will be included in the case file as a basis for determining the Government's prospects for financial recovery through foreclosure.

(2) *Recommendation for deficiency judgment.* If the debt will not be satisfied by

the foreclosure, the borrower's financial situation will be assessed to determine if there is a possibility of further recovery on the account through a deficiency judgment. A summary of these determinations will be fully documented and appropriate recommendations made concerning deficiency judgment in the applicable problem case report.

(3) *Historic preservation.* If it is likely that FmHA or its successor agency under Public Law 103-354 will acquire title to the property as a result of the foreclosure, and the structure(s) on the property will be in excess of 50 years old at the time of acquisition or meet any of the other criteria contained in §1955.137(c) of subpart C of part 1955 of this chapter, steps should be initiated to meet the requirements of the National Historic Preservation Act as outlined in §1955.137(c). Formal steps should not be initiated until the conclusion of all appeals. However, any such documentation required may be completed when the problem case report is prepared. This action should eliminate delays in selling the property after acquisition.

(c) *Submission of problem case.* The servicing official will submit the completed problem case docket to the official authorized to approve the foreclosure (approval official). Before approval of foreclosure and acceleration of the account, the approval official is responsible for review of the problem case report to see that all items are complete and that all required servicing actions have been taken and all required notices given the borrower. The narrative portion of the report should provide complete information on the borrower's financial condition, deficiency judgment in case the debt is not satisfied by the foreclosure, and other pertinent background items. The approval official will approve or disapprove the foreclosure, or make a recommendation and refer the case to the National Office, if not within his/her approval authority. If foreclosure is not approved, the case will be returned to the originating office with instructions for further servicing. Problem case submission is as follows:

(1) *For loans to individuals.* The County Supervisors will submit the case to the District Director.

(2) *For loans to organizations.* The District Director will submit the case to the State Director along with a proposed liquidation and management plan covering the time the foreclosure is in process. The State Director will obtain the advice of OGC if required in connection with the type of loan being liquidated.

(d) *Approval of foreclosure.* When foreclosure is approved, it will be handled as follows:

(1) *Prior lien(s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA or its successor agency under Public Law 103-354 will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA or its successor agency under Public Law 103-354 loan(s), either settling the prior lien or foreclosing subject to it. The provisions of §1965.11(c) of subpart A of part 1965 of this chapter must be followed for loans serviced under subpart A of part 1965. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA or its successor agency under Public Law 103-354's position. If State laws affect this action, a State Supplement will be issued with the advice of OGC to establish the procedure to be followed. For real property located within the confines of a federally recognized Indian reservation owned by a Native American borrower-owner, an analysis of whether FmHA or its successor agency under Public Law 103-354 should acquire title must include facts which demonstrate the fair market value after considering the cost of clean-up of hazardous substances on the property.

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account

will be accelerated using a notice substantially similar to exhibits B, C, D, or E of this subpart, or for multi-family housing, FmHA or its successor agency under Public Law 103-354 Guide Letters 1955-A-1 or 1955-A-2 (available in any FmHA or its successor agency under Public Law 103-354 Office), as appropriate, to be signed by the official who approved the foreclosure. The accounts of borrowers with pending Chapter 12 and 13 cases which have not been discharged will be accelerated in accordance with instructions from OGC. Upon OGC approval, accounts of these borrowers may be accelerated using a notice substantially similar to exhibit D of this subpart. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with §1965.26 (c) of subpart A of part 1965 of this chapter. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under subpart A of part 1962 of this chapter, the Finance Office will be sent a copy of exhibits D, E, or E-1 (available in any FmHA or its successor agency under Public Law 103-354 office) as applicable. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases). If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official. Farmer Program appeals will be concluded before acceleration. For MFH loans, a

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copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

(i) Where monetary default is involved, the account may be accelerated immediately after approval of foreclosure.

(ii) Where monetary default is *not* involved, the account will not be accelerated until the concurrence of OGC is obtained.

(iii) If borrower obtained the loan while a civilian, entered military service after the loan was closed, the FmHA or its successor agency under Public Law 103-354 has not obtained a waiver of rights under the Soldiers and Sailors Relief Act, the account will not be accelerated until OGC has reviewed the case and given instructions.

(iv) If the decision is made to liquidate the farm loan(s) of a borrower who also has a SFH loan(s), and the dwelling was used as security for the farm loan(s) it will not be necessary to meet the requirements of 7 CFR part 3550 prior to accelerating the account. Except that, if the borrower is in default on his/her farm loan(s), the SFH account must have been considered for interest credit and/or moratorium at the time servicing options are being considered for the FP loan(s) prior to acceleration. If it is later determined the FP loan(s) are to receive additional servicing in lieu of liquidation, the RH loan will be reinstated simultaneously with the FP servicing actions and may be reamortized in accordance with 7 CFR part 3550. Accounts of a borrower who has both Farmer Program and SFH loan(s) may be accelerated as follows:

(A) When the borrower's dwelling is financed with an SFH loan(s) is secured by and located on the same farm real estate as the Farmer Program loan(s) (dwelling located on the farm), the SFH loan(s) will be serviced in accordance with §1965.26(c)(1) of subpart A of part 1965 of this chapter.

(B) When the borrower's dwelling is financed with an SFH loan(s) and is located on a nonfarm tract which also serves as additional security for the Farmer Program loan(s), the loans(s)

will be serviced in accordance with §1965.26 (c)(2) of subpart A of part 1965 of this chapter.

(C) When the borrower's dwelling is financed with an SFH loan(s) and is on a non-farm tract which does not serve as additional security for the Farmer Program loan(s), it will NOT be accelerated simultaneously with sending out attachments 5 and 6, or 5-A and 6-A, or attachment 9 and 10, or 9-A and 10-A, of exhibit A of subpart S of part 1951 of this chapter, as applicable, unless it is subject to liquidation based on provisions of 7 CFR part 3550, taking into consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. If the SFH loan is in default and subject to liquidation based on provisions of 7 CFR part 3550, the SFH loan(s) must be accelerated at the same time the borrower is sent attachment 5 and 6, or 5-A and 6-A, or attachments 9 and 10, or 9-A and 10-A, to exhibit A of subpart S of part 1951 of this chapter, as applicable. For those borrowers who are in non-monetary default on their Farmer Programs loans and fail to return attachment 4 of exhibit A of subpart S of part 1951 of this chapter, the Farmer Programs loans and SFH loans will be accelerated at the same time. If the borrower appeals, one appeal hearing and one review will be held for both adverse actions.

(D) If a borrower's FP loan(s) were accelerated prior to May 7, 1987, and the SFH loan(s) is not accelerated, the SFH loan will be accelerated at the same time the borrower is sent attachments 5 and 6, or 5-A and 6-A, or attachments 7 and 8 to exhibit A of subpart S of 1951 of this chapter, as applicable, unless the requirements of §1965.26 of subpart A of part 1965 of this chapter are met or the liquidation of the SFH loan is based on provisions of 7 CFR part 3550. If the borrower is sent attachments 5 and 6, or 5-A and 6-A to exhibit A of subpart S of 1951 of this chapter, as applicable, and requests an appeal, one hearing and one review will be held for both the adverse action on the FP loan restructuring request and SFH acceleration notices. If the borrower is sent attachments 7 and 8 to exhibit A of subpart S of 1951 of this

chapter, there are no further appeals on the FP loans; but, the borrower is entitled to a hearing and a review on the SFH acceleration notice.

(v) For MFH loans, the acceleration notice will advise the borrower of all applicable prepayment requirements, in accordance with 7 CFR part 3560, subpart N. The requirements include the application of restrictive-use provisions to loans made on or after December 21, 1979, prepaid in response to acceleration notices and all tenant and agency notifications. The acceleration notice will also remind borrowers that rent levels cannot be raised during the acceleration without FmHA or its successor agency under Public Law 103-354 approval, even after subsidies are canceled or suspended. Tenants are to be notified of the status of the project and of possible consequences of these actions. If the borrower wishes to prepay the project in response to the acceleration and FmHA or its successor agency under Public Law 103-354 makes a determination that the housing is no longer needed, a minimum of 180 days' notice to tenants is required before the project can be removed from the FmHA or its successor agency under Public Law 103-354 program. Letters of Priority Entitlement must be made available.

(3) *Offers by borrowers after acceleration of account*—(i) *Farmers Programs (FP) accelerations*. This category also includes non-FP loans to the same borrower which have been accelerated as part of the same action. After the account is accelerated, the borrower will have 30 days from the date of the acceleration notice to make payment in full to stop the acceleration, unless State or tribal law requires that the foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify the requirement.

(A) Payment in full [see exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office)] may consist of the following means of fully satisfying the debt.

- (1) Cash.
- (2) Transfer and assumption.
- (3) Sale of property.
- (4) Voluntary conveyance.

(B) Payments which do not pay the account in full can be accepted subject to the following requirements:

(1) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(2) If the borrower is in the process of selling security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed. In States where payments cannot be accepted unless the acceleration is reversed, the payments will not be accepted. A State supplement will be issued to address State law on accepting payments after acceleration.

(3) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result. Disposition of such payments will be made after consulting OGC.

(4) The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). In all other cases, the approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made.

(ii) *All other accelerations*. After the account is accelerated, loan servicing ceases. For example, for SFH loans, the renewal or granting of interest credit or a moratorium is not authorized. The servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. If payments are mistakenly accepted and credited to the borrower's

account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenants in the real estate instruments will result. Disposition of such payments will be made after consultation with OGC. The servicing official will notify the approval official of any offer received from the borrower. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a written proposal to cure the default(s). The receipt of a payment with no proposal to cure the defaults is not considered a viable offer, and such payments will be returned to the borrower. The approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be notified when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and after any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim, the tenants will continue rental pay-

ments in accordance with their leases, and all rental rates and lease renewals and provisions will be continued as if acceleration had not taken place.

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA or its successor agency under Public Law 103-354 451-10, "Request for Statement of Account," will be processed in accordance with the FMI. When an official statement of account is not required, account balances and recapture information may be obtained from the field office terminal.

(5) *Appeals.* All appeals will be handled pursuant to subpart B of part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or until the time has elapsed during which an appeal or a request for review may be made. In Farmer Programs cases, (except graduation cases under subpart F of part 1951 of this chapter), the borrower must have received the appropriate notices and consideration for primary loan servicing per subpart S of part 1951 of this chapter. Any Farmer Programs cases may be accelerated after all primary loan servicing options have been considered and all related appeals concluded, but will not be submitted to OGC for foreclosure action until all appeals related to any preservation rights have been concluded.

(6) *Petition in bankruptcy filed by borrower after acceleration of account.*(i) When bankruptcy is filed after an account has been accelerated, any foreclosure action initiated by FmHA or its successor agency under Public Law 103-354 must be suspended until:

(A) The bankruptcy case is *dismissed* or *closed* (a discharge of debtor does not close the case);

(B) An Order lifting the automatic stay is obtained from the Bankruptcy Court; or

(C) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(ii) The State Director will request the assistance of OGC in obtaining the Order(s) described in paragraph (c)(6)(i)(B) of this section.

(e) *Referral of case.* If the borrower fails to satisfy the account during the period of time specified in the acceleration notice, and no appeal is pending, the foreclosure process will continue:

(1) If the District Director is the approval official, he/she will forward the case file with all pertinent documents and information concerning the foreclosure action and appeal, if any, to the State Director for completion of the foreclosure.

(2) If the State Director is the approval official, or in cases referred by the District Director under paragraph (e)(1) of this section, the State Director will forward to OGC the case file and all documents needed by OGC to process the foreclosure. A State Supplement will be issued, with the advice and assistance of OGC, to reflect the make-up of the foreclosure docket. Since foreclosure processing varies widely from State to State, each State Supplement will be explicit in outlining step-by-step procedures. At the time indicated by OGC in the foreclosure instructions, Form FmHA or its successor agency under Public Law 103-354 1951-6, "Borrower Account Description Flag," will be processed in accordance with the FMI. After referral to OGC, further actions will be in accordance with OGC's instructions for completion of the foreclosure. If prior approval of the Administrator is obtained, nonjudicial foreclosure for monetary default may be handled as outlined in a State Supplement approved by OGC without referral to OGC before foreclosure.

(f) *Completion of foreclosure*—(1) *Foreclosure advertisement for organization loans subject to title VI of the Civil Rights Act of 1964.*(i) The advertisement for foreclosure sale of property subject to title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the non-discrimination provisions of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin,

handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later." At least 30 days before the foreclosure sale, the County Supervisor will notify, in writing, the Indian tribe which has jurisdiction over the reservation, and in which the real property is owned by a Native American member of said tribe that a foreclosure sale will be conducted to resolve this account, and will provide:

(A) Projected sale date and location;

(B) Fair market value of property;

(C) Amount FmHA or its successor agency under Public Law 103-354 will bid on the property; and

(D) Amount of FmHA or its successor agency under Public Law 103-354 debt against the property.

(ii) The purchaser will be required to sign Form FmHA or its successor agency under Public Law 103-354 400-4, "Assurance Agreement," if the property will be used for its original or similar purposes.

(2) *Restrictive-use provisions for MFH loans.* For MFH loans, the advertisement will state the restrictive-use provisions which will be included in any deed used to transfer title.

(3) *Expenses.* Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in §1955.5 (d) of this subpart. Costs will be charged as outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(4) *Notice of judgment.* In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA or its successor agency under Public Law 103-354 1962-20, "Notice of Judgment," will be processed in accordance with the FMI. This will establish a judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

(5) *Gross investment.* The gross investment is the sum of the following:

(i) The unpaid balance of one of the following, as applicable:

(A) In States with nonjudicial foreclosure, the borrower's FmHA or its successor agency under Public Law 103-354 account balance reflecting secured loan(s) and advances; and where State law permits, unsecured debts; or

(B) In States with judicial foreclosure, the judgment account established as a result of the foreclosure judgment in favor of FmHA or its successor agency under Public Law 103-354.

(ii) All recoverable costs charged (or to be charged) to the borrower's account in connection with the foreclosure action and other costs which OGC advises must be paid from proceeds of the sale before paying the FmHA or its successor agency under Public Law 103-354 secured debt, including but not limited to payment of real estate taxes and assessments, prior liens, legal fees including U.S. Attorney's and U.S. Marshal's, and management fees; and

(iii) If a SFH loan subject to recapture of interest credit is involved, the total amount of subsidy granted and principal reduction attributed to subsidy.

(6) *Amount of Government's bid.* Except for FP loans and as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA or its successor agency under Public Law 103-354's gross investment or the market value of the security, whichever is less. For real property located within the confines of a federally recognized Indian reservation and which is owned by an FmHA or its successor agency under Public Law 103-354 borrower who is a member of the tribe with jurisdiction over the reservation, the Government's bid will be the greater of the fair market value or the FmHA or its successor agency under Public Law 103-354 debt against the property, unless FmHA or its successor agency under Public Law 103-354 determines that, because of the presence of hazardous substances on the property, it is not in the best interest of the Government to bid such amount, in which case there may be a deduction from the

bid for the costs for hazardous material assessment and/or mitigation. For FP loans, except as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA or its successor agency under Public Law 103-354's gross investment or the amount determined by use of exhibit G-1 of this subpart, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA or its successor agency under Public Law 103-354 appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA or its successor agency under Public Law 103-354 in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

(7) *Bidding.* The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings or State nonjudicial foreclosure law provides for someone other than an FmHA or its successor agency under Public Law 103-354 employee to enter the Government's bid. When the State Director determines attendance of an FmHA or its successor agency under Public Law 103-354 employee at the sale might pose physical danger, a written bid may be submitted to the Marshal, Sheriff, or other party in charge of holding the sale. The Government's bid will be entered when no other party makes a bid or when the last bid will result in the property being sold for less than the bid authorized in paragraph (f)(6) of this section.

(i) When FmHA or its successor agency under Public Law 103-354 is the senior lienholder, only one bid will be entered, and that will be for the amount authorized by the State Director.

(ii) When FmHA or its successor agency under Public Law 103-354 is not the senior lienholder and OGC advises that the borrower has no redemption

rights or if a deficiency judgment will be obtained, the State Director may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, the State Director's instructions to the bidder will state the initial bid, bidding increments, and the maximum bid.

(g) *Reports on sale and finalizing foreclosure.* Immediately after a foreclosure sale at which the State Director has designated a person to bid on behalf of the Government, the servicing official will furnish the State Director a report on the sale. The State Director will forward a copy of this report to OGC and, for MFH loans, to the National Office. Based on OGC's instructions, a State supplement will provide a detailed outline of actions necessary to complete the foreclosure.

[50 FR 23904, June 7, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1955.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§§ 1955.16–1955.17 [Reserved]

§ 1955.18 **Actions required after acquisition of property.**

The approval official may employ the services of local designated attorneys, of a case by case basis, to process all legal procedures necessary to clear the title of foreclosure properties. Such attorneys shall be compensated at not more than their usual and customary charges for such work. Contracting for such attorneys shall be accomplished pursuant to the Federal acquisition regulations and related procurement regulations and guidance.

(a)–(d) [Reserved]

(e) *Credit to the borrower's account or foreclosure judgment account—(1) For SFH accounts.* When FmHA or its successor agency under Public Law 103–354 acquired the property, the account will be satisfied unless:

(i) In a voluntary conveyance case where the debt exceeds the market value of the property and the borrower is *not* released from liability, in which case the account credit will be the market value (less outstanding liens if any); or

(ii) In a foreclosure where the bid is less than the account balance and a deficiency judgment will be sought for the difference, in which case the account credit will be the amount of FmHA or its successor agency under Public Law 103–354's bid.

(2) *For all types of accounts other than SFH.* When FmHA or its successor agency under Public Law 103–354 acquired the property, the account credit will be as follows:

(i) In a voluntary conveyance case:

(A) Where the market value of the property equals or exceeds the debt or where the borrower is released from liability for any difference, the account will be satisfied.

(B) Where the debt exceeds the market value of the property and the borrower is *not* released from liability, the account credit will be the market value (less outstanding liens, if any).

(ii) In a foreclosure, the account credit will be the amount of FmHA or its successor agency under Public Law 103–354's bid *except* when incremental bidding as provided for in § 1955.15(f)(7)(ii) of this subpart was used, in which case the account credit will be the maximum bid that was authorized by the State Director.

(3) *For all types of accounts when FmHA or its successor agency under Public Law 103–354 did not acquire the property.* The sale proceeds will be handled in accordance with applicable State laws with the advice and assistance of OGC, including remittance of funds, application of the borrower's account credit, and disbursement of any funds in excess of the amount due FmHA or its successor agency under Public Law 103–354.

(4) *In cases where FmHA or its successor agency under Public Law 103–354 acquired security property by means other than voluntary conveyance or foreclosure.* In these cases, such as conveyance by a bankruptcy trustee or by Court Order, the account credit will be as follows:

(i) If the market value of the acquired property equals or exceeds the debt, the account will be satisfied.

(ii) If the debt exceeds the market value of the acquired property, the account credit will be the market value.

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(f)–(1) [Reserved]

[50 FR 23904, June 7, 1985, as amended at 52 FR 41957, Nov. 2, 1987; 53 FR 27827, July 25, 1988; 53 FR 35764 Sept. 14, 1988; 55 FR 35295, Aug. 29, 1990; 56 FR 10147, Mar. 11, 1991; 56 FR 29402, June 27, 1991; 58 FR 38927, July 21, 1993; 58 FR 68725, Dec. 29, 1993; 60 FR 34455, July 3, 1995]

§ 1955.19 [Reserved]

§ 1955.20 Acquisition of chattel property.

Every effort will be made to avoid acquiring chattel property by having the borrower or FmHA or its successor agency under Public Law 103–354 liquidate the property according to Subpart A of Part 1962 of this chapter and apply the proceeds to the borrower's account(s). Methods of acquisition authorized are:

(a) *Purchase at the following types of sale:* (1) Execution sale conducted by the U.S. Marshal, sheriff or other party acting under Court order to satisfy judgment liens.

(2) FmHA or its successor agency under Public Law 103–354 foreclosure sale conducted by the U.S. Marshal or sheriff in States where a State Supplement provides for sales to be conducted by them.

(3) Sale by trustee in bankruptcy.

(4) Public sale by prior lienholder.

(5) Public sale conducted under the terms of Form FmHA or its successor agency under Public Law 103–354 455–4, "Agreement for Voluntary Liquidation of Chattel Security," the power of sale in security agreements or crop and chattel mortgage, or similar instrument, if authorized by State Supplement.

(b) *Voluntary conveyance.* Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens and the borrower can be released from liability under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA or its successor agency under Public Law 103–354 in order to accept voluntary conveyance of chattels is not authorized. Before a voluntary conveyance from a Farmer Program loan borrower can be accepted, the borrower must be sent Exhibit A with Attachments 1 and

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2 of Subpart S of Part 1951 of this chapter.

(1) *Offer.* The borrower's offer of voluntary conveyance will be made on Form FmHA or its successor agency under Public Law 103–354 1955–1. If it is determined the conveyance offer can be accepted, the borrower will execute a bill of sale itemizing each item of chattel property being conveyed and will provide titles to vehicles or other equipment, where applicable.

(2) *Acceptance of offer release from liability.* Before accepting an offer to convey chattels to FmHA or its successor agency under Public Law 103–354, the concurrence of the State Director must be obtained. When chattel security is voluntarily conveyed to the Government and the borrower and co-signer(s), if any, are to be released from liability, the servicing official will stamp the note(s) "Satisfied by Surrender of Security and Borrower Released from Liability." When the Agency debt less the market value and prior liens is \$1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. All cases requiring a release of liability will be submitted in accordance with Exhibit A of Subpart B of Part 1956 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office). Form FmHA or its successor agency under Public Law 103–354 1955–1 will be executed by the servicing official showing acceptance by the Government, and the satisfied note(s) and a copy of Form FmHA or its successor agency under Public Law 103–354 1955–1 will be furnished to the borrower.

(3) *Release of lien(s).* When an offer has been accepted as outlined in paragraph (b)(2) of this section, the servicing official will release any liens of record which secured the satisfied indebtedness.

(4) *Rejection of offer.* If it is determined an offer of voluntary conveyance will not be accepted, the servicing official will indicate on Form FmHA or its successor agency under Public Law 103–

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354 1955-1 that the offer is rejected, execute the form, and furnish a copy to the borrower.

(c) *Attending sales.* The servicing official will:

(1) Attend all sales described in paragraph (a)(5) of this section unless an exception is authorized by the State Director because of physical danger to the FmHA or its successor agency under Public Law 103-354 employee or adverse publicity would be likely.

(2) Attend public sales by prior lienholders when the market value of the chattel property is significantly more than the amount of the prior lien(s).

(3) Obtain the advice of the State Director on attending sales described in paragraphs (a) (1), (2), and (3) of this section.

(d) *Appraising chattel property.* Prior to the sale, the servicing official will appraise chattel property using Form FmHA or its successor agency under Public Law 103-354 440-21, "Appraisal of Chattel Property." If a qualified appraiser is not available to appraise chattel property, the State Director may obtain an appraisal from a qualified source outside FmHA or its successor agency under Public Law 103-354 by contract in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(e) *Abandonment of security interest.* The State Director may authorize abandonment of the Government's security interest when chattel property, considering costs of moving or rehabilitation, has no market value and obtaining title would not be in the best interest of the Government.

(f) *Bidding at sale.* (1) The servicing official is authorized to bid at sales described in paragraph (a) of this section. Ordinarily, only one bid will be made on items of chattel security unless the State Director authorizes incremental bidding. Bids will be made only when no other party bids or when it appears bidding will stop and the property will be sold for less than the amount of the Government's authorized bid. When the State Director determines attendance of an FmHA or its successor agency

under Public Law 103-354 employee might pose physical danger, a written bid may be submitted to the party holding the sale. The bid(s) will be the lesser of:

(i) The market value of the item(s) less the estimated costs involved in the acquisition, care, and sale of the item(s) of security; or

(ii) The unpaid balance of the borrower's secured FmHA or its successor agency under Public Law 103-354 debt plus prior liens, if any.

(2) Bids will not be made in the following situations unless authorized by the State Director:

(i) When chattel property under prior lien has a market value which is not significantly more than the amount owed the prior lienholder. If FmHA or its successor agency under Public Law 103-354 holds a junior lien on several items of chattel property, advice should be obtained from the State Director on bidding.

(ii) After sufficient chattel property has been bid in by FmHA or its successor agency under Public Law 103-354 to satisfy the FmHA or its successor agency under Public Law 103-354 debt; prior liens, and cost of the sale.

(iii) When the sale is being conducted by a lienholder junior to FmHA or its successor agency under Public Law 103-354.

(iv) At a private sale.

(v) When the sale is being conducted under the terms of Form FmHA or its successor agency under Public Law 103-354 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)".

(g) *Payment of costs.* Costs to be paid by FmHA or its successor agency under Public Law 103-354 in connection with acquisition of chattel property will be paid as outlined in §1955.5(d) of this subpart as recoverable costs.

NOTE: Payment of other lienholders' debts in connection with voluntary conveyance of chattels is not authorized.

(h) *Reporting acquisition of chattel property.* Acquisition of chattel property will be reported by use of Form FmHA or its successor agency under Public Law 103-354 1955-3 prepared and

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distributed in accordance with the FMI.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45783, Nov. 1, 1985; 51 FR 45433, Dec. 18, 1986; 53 FR 27828 July 25, 1988; 53 FR 35764, Sept. 14, 1988; 60 FR 28320, May 31, 1995]

§ 1955.21 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator; or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.22 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA or its successor agency under Public Law 103-354 officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2006-B (available in any FmHA or its successor agency under Public Law 103-354 office).

§§ 1955.23-1955.49 [Reserved]

§ 1955.50 OMB control number.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control num-

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ber 0575-0109. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of .56 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0109), Washington, DC 20503.

[57 FR 1372, Jan. 14, 1992]

EXHIBITS A-F TO SUBPART A OF PART 1955 [RESERVED]

Subpart B—Management of Property

SOURCE: 53 FR 35765, Sept. 14, 1988, unless otherwise noted.

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS) and herein referred to as "Agency." This subpart does not apply to Farm Service Agency, Farm Loan Programs, or to RHS single family housing loans or community program loans sold without insurance to the private sector. These community program loans will be serviced by the private sector, and future revisions to this subpart no longer apply to such loans. This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Program of RHS. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title. This subpart covers:

(a) Management of real property which has been taken into custody by

the respective Agency after abandonment by the borrower;

(b) Management of real and chattel property which is in Agency inventory; and

(c) Management of real and chattel property which is security for a guaranteed loan liquidated by an Agency (or which the Agency is in the process of liquidating).

[61 FR 59778, Nov. 22, 1996, as amended at 69 FR 69106, Nov. 26, 2004; 72 FR 55019, Sept. 28, 2007; 72 FR 64123, Nov. 15, 2007]

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA or its successor agency under Public Law 103-354 will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA or its successor agency under Public Law 103-354 will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in subpart A of part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

§ 1955.53 Definitions.

As used in this subpart, the following definitions apply:

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA or its successor agency under Public Law 103-354.

Contracting Officer (CO). CO means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized representatives of the CO

acting within the limits of their authority as delegated by the CO.

Custodial property. Borrower-owned real property and improvements which serve as security for an FmHA or its successor agency under Public Law 103-354 loan, have been abandoned by the borrower, and of which FmHA or its successor agency under Public Law 103-354 has taken possession.

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Government. The United States of America, acting through the FmHA or its successor agency under Public Law 103-354, U.S. Department of Agriculture.

Indian reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

Inventory property. Real and chattel property and related rights to which the Government has acquired title.

Loans to individuals. Farmer Program loans, as defined above, whether to individuals or entities; Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

Loans to organizations. Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use (Grazing Associations) Business and Industrial (B&I) to both individuals and groups, Rural Development

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Loan Fund (RDLF), Intermediary Relending Program (IRP), Nonprofit National Corporation (NNC), Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the requirements for existing housing as described in 7 CFR part 3550. It may contain a structure which would meet program standards; however, is so remotely located it would not serve as an adequate residential unit or an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

Nonrecoverable cost is a contractual or noncontractual program loan cost expense not chargeable to a borrower, property account, or part of the loan subsidy.

Office of the General Counsel (OGC). The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

Program property. SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

Recoverable cost is a contractual or noncontractual program loan expense chargeable to a borrower, property account, or part of the loan subsidy.

Servicing official. For loans to individuals as defined in this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For Rural Development Loan Fund and Intermediary Relending Program loans, the servicing official is the Director, Busi-

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ness and Industry Division. For Nonprofit National Corporations loans, the servicing official is Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

Suitable property. For FSA inventory property, real property that can be used for agricultural purposes, including those farm properties that may be used as a start up or add-on parcel of farmland. It also includes a residence or other off-farm site that could be used as a basis for a farming operation. For agencies other than FSA, real property that could be used to carry out the objectives of the Agency's loan program with financing provided through that program.

Surplus property. For FSA inventory property, real property that cannot be used for agricultural purposes including nonfarm properties. For other agencies, property that cannot be used to carry out the objectives of financing available through the applicable loan program.

[53 FR 35765, Sept. 14, 1988, as amended at 56 FR 29402, June 27, 1991; 57 FR 19525, 19528, May 7, 1992; 58 FR 58648, Nov. 3, 1993; 62 FR 44396, Aug. 21, 1997; 63 FR 41716, Aug. 5, 1998; 67 FR 78329, Dec. 24, 2002]

§ 1955.54 Redlegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this

subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multi-family housing type loans will be handled in accordance with 7 CFR part 3560, subpart J.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s), if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmers Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of this part. In farmer program cases, borrowers must receive Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send

these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) *Taking security property into FmHA or its successor agency under Public Law 103-354 custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of this part, unless the borrower can be located and voluntary liquidation accomplished. Farmer Program loan borrowers will be sent the forms listed in paragraph (a) of this section and the provisions of § 1965.26 of Subpart A of Part 1965 of this chapter will be followed.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter, certified mail, return receipt requested, at the address currently used by Finance Office, outlining proposed actions by FmHA or its successor agency under Public Law 103-354 to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with 7 CFR part 3560.

(ii) If the unpaid loan balance plus recoverable costs exceeds the State Director's loan approval authority, the State Director will refer the case to

the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with §1955.15 of Subpart A of this part and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that foreclosure be initiated in accordance with §1955.15 of Subpart A of this part and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA or its successor agency under Public Law 103–354 official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real

property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA or its successor agency under Public Law 103–354 has taken the real property into custody.

Actions by FmHA or its successor agency under Public Law 103–354 must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA or its successor agency under Public Law 103–354 security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of \$1,000 per property must have prior approval of the state Director.

(d) *Emergency advances where liquidation is pending.* Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs.* Income received from the property will be applied to the borrower's account as an extra payment. Expenditures will be charged to

the borrower's account as a recoverable cost.

(f) *Off-site procurements.* Circumstances may require off-site procurement action(s) to be taken by FmHA or its successor agency under Public Law 103-354 to protect custodial, security or inventory property from damage or destruction and/or protect the Government's investment in the property. Such procurements may include, but are not limited to construction or reconstruction of roads, sewers, drainage work or utility lines. This type work may be accomplished either through FmHA or its successor agency under Public Law 103-354 procurement or cooperative agreement. However, if FmHA or its successor agency under Public Law 103-354 is obtaining a service or product for itself only, it must be a procurement and any such actions will be in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). Funding will come from the appropriate insurance fund.

(1) *Conditions for procurement.* Such expenditures may be made only when all of the following conditions are met:

(i) A determination is made that failure to procure work would likely result in a property loss greater than the expenditure;

(ii) There are no other feasible means (including cooperative agreements) to accomplish the same result;

(iii) The recovery of such advance(s) is not authorized by security instruments in the case of security or custodial property (no such limitation exists for inventory property);

(iv) Written documentation supporting subparagraphs (i), (ii) and (iii) has been obtained from the authorized program official;

(v) Approval has been obtained from the appropriate Assistant Administrator.

(2) *Direct procurement action.* Where direct procurement action is contemplated, an opinion must be obtained from the Regional Attorney that:

(i) FmHA or its successor agency under Public Law 103-354 has the au-

thority to enter the off-site property to accomplish the contemplated work, or

(ii) A specific legal entity has authority to grant an easement (right-of-way) to FmHA or its successor agency under Public Law 103-354 for the contemplated work and such an easement, in a form approved by the Regional Attorney, has been obtained.

(3) *Cooperative agreements.* Cooperative agreements between FmHA or its successor agency under Public Law 103-354 and other entities may be made to accomplish the requirement where the principal purpose is to provide money, property, services or items of value to state or local governments or other recipients to accomplish a public purpose. Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) is an example of a typical cooperative agreement. A USDA handbook providing detailed guidance for all parties is available from the USDA—Office of Operations and Finance. Although cooperative agreements are not a contracting action, the authority, responsibility and administration of these agreements will be handled consistent with contracting actions.

(4) *Consideration of maintenance agreements.* Maintenance requirements must be considered in evaluating the economic benefits of off-site procurements. Where feasible, arrangements or agreements should be made with state, local governments or other entities to ensure continued maintenance by dedication or acceptance, letter agreements, or other applicable statutes.

[53 FR 35765, Sept. 14, 1988, as amended at 54 FR 20521, May 12, 1989; 57 FR 36591, Aug. 14, 1992; 68 FR 61331, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations in paragraphs (a)(1), (a)(2) or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service. The Regional Director may or may not concur that the proposed action does or does

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not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§ 1955.57 Real property containing underground storage tanks.

Within 30 days of acquisition of real property into inventory, FmHA or its successor agency under Public Law 103-354 must report certain underground storage tanks to the State agency identified by the Environmental Protection

Agency (EPA) to receive such reports. Notification will be accomplished by completing an appropriate EPA or alternate State form, if approved by EPA. A State supplement will be issued providing the appropriate forms required by EPA and instructions on processing same.

(a) Underground storage tanks which meet the following criteria must be reported:

(1) It is a tank, or combination of tanks (including pipes which are connected thereto) the volume of which is ten percent or more beneath the surface of the ground, including the volume of the underground pipes; and

(2) It is not exempt from the reporting requirements as outlined in paragraph (b) of this section; and

(3) The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance; or

(4) The tank contained a regulated substance, was taken out of operation by FmHA or its successor agency under Public Law 103-354 since January 1, 1974, and remains in the ground. Extensive research of records of inventory property sold before the effective date of this section is not required.

(b) The following underground storage tanks are *exempt* from the EPA reporting requirements:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) Pipeline facilities (including gathering lines) regulated under: (i) The Natural Gas Pipeline Safety Act of 1968; (ii) the Hazardous Liquid Pipeline Safety Act of 1979; or (iii) for an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in (b)(4) (i) or (ii) of this section;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

(c) A copy of each report filed with the designated State agency will be forwarded to and maintained in the State Office by program area.

(d) Prospective purchasers of FmHA or its successor agency under Public Law 103-354 inventory property with a reportable underground storage tank will be informed of the reporting requirement, and provided a copy of the form filed by FmHA or its successor agency under Public Law 103-354.

(e) In a State which has promulgated additional underground storage tank reporting requirements, FmHA or its successor agency under Public Law 103-354 will comply with such requirements and a State supplement will be issued to provide necessary guidance.

(f) Regardless of whether an underground storage tank must be reported under the requirements of this section, if FmHA or its successor agency under Public Law 103-354 personnel detect or believe there has been a release of petroleum or other regulated substance from an underground storage tank on an inventory property, the incident will be reported to the appropriate State Agency, the State Environmental Coordinator and appropriate program chief. These parties will collectively inform the servicing official of the appropriate response action.

§§ 1955.58–1955.59 [Reserved]

§ 1955.60 Inventory property subject to redemption by the borrower.

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any

other items OGC deems necessary to comply with State laws. Routine care and maintenance will be provided according to §1955.64 of this subpart to preserve and protect the property. Repairs are limited to those essential to prevent further deterioration of the property or to remove a health or safety hazard to the community in accordance with §1955.64(a) of this subpart unless State law permits full recovery of cost of repairs in which case usual policy on repairs is applicable. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA or its successor agency under Public Law 103-354 will not rent the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in §1955.138 of Subpart C of this part.

[54 FR 20522, May 12, 1989]

§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.

Advice and assistance will be obtained from OGC where eviction from realty or dispossession of chattel property is necessary. Where OGC has given written authorization, eviction may be effected through State courts rather than Federal courts when the former borrower is involved, or through local courts instead of Federal/State courts when the party occupying/possessing the FmHA or its successor agency under Public Law 103-354 property is not the former borrower. In those cases, a State Supplement will be issued to provide explicit instructions. For MFH, eviction of tenants will be handled in accordance with 7 CFR part 3560, subpart D and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

[54 FR 20522, May 12, 1989, as amended at 69 FR 69106, Nov. 26, 2004]

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items

of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA or its successor agency under Public Law 103-354 lien, the personal property will be handled as outlined below unless otherwise directed by a State supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA or its successor agency under Public Law 103-354 official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record, the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA or its successor agency under Public Law 103-354 unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time specified, the servicing official will notify the former borrower at the last known address by certified mail, return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA or its successor agency under Public Law 103-354 unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA or its successor agency under Public Law 103-354 file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder

after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list to the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by the agency from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholders less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted and applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).

(ii) To an unsatisfied balance on the FmHA or its successor agency under Public Law 103-354 loan account, if any.

(iii) To the borrower, if whereabouts are known.

(2) If personal property is not sold, a mover or hauler may be authorized to take the items for moving costs. Refer to FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office) for guidance.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA or its successor agency under Public Law 103-354 will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State

laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State supplement outlining the method to be followed which will comply with applicable State laws.

[53 FR 35765, Sept. 14, 1988, as amended at 68 FR 61332, Oct. 28, 2003]

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property can be used for program purposes. The suitability determination will be recorded in the running record of the case file.

(a) *Determination.* The Agency will classify property that secured loans or was acquired under the CONACT as "suitable property" or "surplus property" in accordance with the definitions found in § 1955.53.

(b) *Grouping and subdividing farm properties.* To the maximum extent practicable, the Agency will maximize the opportunity for beginning farmers and ranchers to purchase inventory properties. Farm properties may be subdivided or grouped according to § 1955.140, as feasible, to carry out the objectives of the applicable loan program. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. The environmental effects of such actions will be considered pursuant to subpart G of part 1940 of this chapter.

(c) *Housing property.* Property which secured housing loans will be classified as "program" or "nonprogram (NP)." After a determination of whether the property is suited for retention in the respective program, the repair policy outlined in § 1955.64(a) of this subpart will be followed. In determining whether a property is suited for retention in the program, items such as size, design, possible health and/or safety hazards and obsolescence due to functional, economic, or locational conditions must carefully be considered. Generally, program property will meet, or can be realistically repaired to meet, the standards for existing housing outlined in Subpart A of Part 1944 of this chapter provided the property is typical of modest homes in the area. The

cost of repairs will generally not be considered in determining suitability. Since houses, sites and locations vary widely throughout the country, discretion and sound judgment must be used in determining suitability. The majority of houses RHS acquires will be suited for retention and classified as program property. In some instances, property will not be suited for retention in the program and will be classified as "nonprogram (NP)" property. Situations of this type include, but are not limited to:

(1) A dwelling which has been enlarged or improved to the point where it is clearly above modest.

(2) When a determination is made that the property should not have been financed originally.

(3) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by the Agency but which does not conform to current policies. This includes older and/or larger houses of a type which have proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(4) A dwelling which is obsolete due to location, design, construction or age.

(5) A dwelling which requires major redesign/renovation to be brought to program standards.

(d) [Reserved]

[53 FR 35765, Sept. 14, 1988, as amended at 54 FR 20522, May 12, 1989; 58 FR 58648, Nov. 3, 1993; 60 FR 34455, July 3, 1995; 60 FR 55147, Oct. 27, 1995; 62 FR 44396, Aug. 21, 1997; 68 FR 7700, Feb. 18, 2003]

§ 1955.64 [Reserved]

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority*—(1) *County Supervisor.* The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or

secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection of repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA or its successor agency under Public Law 103–354). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in §1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or

mudslide hazard area, lessees or tenants must be notified to that effect in accordance with §1955.66(e) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA or its successor agency under Public Law 103–354 is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in 7 CFR part 3560, subpart D. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," subject to FmHA or its successor agency under Public Law 103–354's approval. Contracts for management of farm inventory property will be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in FmHA or its successor

agency under Public Law 103-354 Instruction 2024-Q (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for an MFH project within the contracting authority outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will

also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest.

If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparer or his/her associates from doing the repair work.

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 Office).

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

[53 FR 35765, Sept. 14, 1988, as amended at 57 FR 36591, Aug. 14, 1992; 69 FR 69106, Nov. 26, 2004; 70 FR 20704, Apr. 21, 2005]

§ 1955.66 Lease of real property.

When inventory real property, except for FSA and MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or the Agency on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with §1955.55(c) of this subpart. The requirements of subpart G of part 1940 of this chapter will be met for all leases.

(a) *Authority to approve lease of property*—(1) *Custodial property*. Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of the Agency.

(2) *Inventory property*. Inventory property may be leased under the following conditions. Except for farm property proposed for a lease under the Homestead Protection Program, any property that is listed or eligible for listing on the National Register of Historic Places may be leased only after the servicing official and the State Historic Preservation Officer determine that the lease will adequately ensure the property's condition and historic character.

(i) *SFH*. SFH inventory will generally not be leased; however, if unusual circumstances indicate leasing may be prudent, the county official is authorized to approve the lease.

(ii) *MFH*. MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with 7 CFR part 3560. In

cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property*. (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by a prior owner who was personally liable for a Farm Credit Programs loan must first be considered for Homestead Protection in accordance with subpart S of part 1951 of this chapter.

(B) Other than for Homestead Protection and except as provided in paragraph (c), the county official may only approve the lease of farm property to a beginning farmer or rancher who was selected through the random selection process to purchase the property but is not able to complete the purchase due to the lack of Agency funding.

(C) When the servicing official determines it is impossible to sell farm property after advertising the property for sale and negotiating with interested parties in accordance with §1955.107 of subpart C of this part, farm property may be leased, upon the approval of the Administrator, on a case-by-case basis. This authority cannot be delegated. Any lease under this paragraph shall be for 1 year only, and not subject to renewal or extension. If the servicing official determines that the prospective lessee may be interested in purchasing the property, the lease may contain an option to purchase.

(D) When a lease with an option to purchase is signed, the lessee should be advised that FSA cannot make a commitment to finance the purchase of the property.

(E) Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(F) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to conversion of wetlands to produce an agricultural commodity. See Exhibit M of subpart G of part 1940 of this chapter. All prospective lessees of inventory property will be notified in

writing of the presence of highly erodible land, converted wetlands and wetland and other important resources such as threatened or endangered species. This notification will include a copy of the completed and signed Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetlands or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that the Agency's compliance requirements for wetlands, converted wetlands, and highly erodible lands are contained in Exhibit M of subpart G of part 1940 of this chapter. Additionally, a copy of the completed and signed Form SCS-CPA-26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form RD 1955-20, "Lease of Real Property," prohibiting the use of the property as specified above.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. A lease of utilities may require approval by State regulatory agencies.

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as a program applicant for purchase of the property (if property is suited for program purposes) and ability to preserve the property. The leasing official may require verification of income or a credit report (to be paid for by the prospective lessee) as he or she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Selection of lessees for FSA property.* FSA inventory property may only be leased to an eligible beginning farmer or rancher who was selected to purchase the property through the random selection process in accordance with §1955.107(a)(2)(ii) of subpart C of this

part. The applicant must have been able to demonstrate a feasible farm plan and Agency funds must have been unavailable at the time of the sale. Any applicant determined not to be a beginning farmer or rancher may request that the State Executive Director conduct an expedited review in accordance with §1955.107(a)(2)(ii) of subpart C of this part.

(d) *Property securing Farm Credit Programs loans located within an Indian Reservation.* (1) State Executive Directors will contact the Bureau of Indian Affairs Agency supervisor to determine the boundaries of Indian Reservations and Indian allotments.

(2) Not later than 90 days after acquiring a property, FSA will afford the Indian tribe having jurisdiction over the Indian reservation within which the inventory property is located an opportunity to purchase the property. The purchase shall be in accordance with the priority rights as follows:

(i) To a member of the Indian tribe that has jurisdiction over the reservation within which the real property is located;

(ii) To an Indian corporate entity;

(iii) To the Indian tribe.

(3) The Indian tribe having jurisdiction over the Indian reservation may revise the order of priority and may restrict the eligibility for purchase to:

(i) Persons who are members of such Indian tribe;

(ii) Indian corporate entities that are authorized by such Indian tribe to purchase lands within the boundaries of the reservation; or

(iii) The Indian tribe itself.

(4) If any individual, Indian corporate entity, or Indian tribe covered in paragraphs (d)(1) and (d)(2) of this section wishes to purchase the property, the county official must determine the prospective purchaser has the financial resources and management skills and experience that is sufficient to assure a reasonable prospect that the terms of the purchase agreement can be fulfilled.

(5) If the real property is not purchased by any individual, Indian corporate entity or Indian tribe pursuant to paragraphs (d)(1) and (d)(2) of this section and all appeals have concluded, the State Executive Director shall

transfer the property to the Secretary of the Interior if they are agreeable. If present on the property being transferred, important resources will be protected as outlined in §§1955.137 and 1955.139 of subpart C of this part.

(6) Properties within a reservation formerly owned by entities and non-tribal members will be treated as regular inventory that is not located on an Indian Reservation and disposed of pursuant to this part.

(e) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). Inventory property will not be leased for a token amount.

(1) *Farm property.* To arrive at a market rent amount, the county official will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential. The income-producing capability of the property during the term of the lease must also be considered. This rental data will be maintained in an operational file as well as in the running records of case files for leased inventory properties. While cash rent is preferred, the lease of a farm on a crop-share basis may be approved if this is the customary method in the area. The lessee will market the crops, provide FSA with documented evidence of crop income, and pay the pro rata share of the income to FSA.

(2) *SFH property.* The lease amount will be the market rent unless the lessee is a potential program applicant, in which case the lease amount may be set at an amount approximating the monthly payment if a loan were made (reflecting payment assistance, if any) calculated on the basis of the price of the house and income of the lessee, plus $\frac{1}{12}$ of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will generally be leased for market rent for that type property in the area. However, such property may be leased for less than market rent with prior approval of the Administrator.

(f) *Property containing wetlands or located in a floodplain or mudslide hazard area.* Inventory property located in areas identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FSA, the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease. Property containing floodplains and wetlands will be leased subject to the same use restrictions as contained in §1955.137(a)(1) of subpart C of this part.

(g) *Highly erodible land.* If farm inventory property contains "highly erodible land," as determined by the NRCS, the lease must include conservation practices specified by the NRCS and approved by FSA as a condition for leasing.

(h) *Lease of FSA property with option to purchase.* A beginning farmer or rancher lessee will be given an option to purchase farm property. Terms of the option will be set forth as part of the lease as a special stipulation.

(1) The lease payments will not be applied toward the purchase price.

(2) The purchase price (option price) will be the advertised sales price as determined by an appraisal prepared in accordance with §761.7 of this title.

(3) For inventory properties leased to a beginning farmer or rancher applicant, the term of the lease shall be the earlier of:

(i) A period not to exceed 18 months from the date that the applicant was selected to purchase the inventory farm, or

(ii) The date that direct, guaranteed, credit sale or other Agency funds become available for the beginning farmer or rancher to close the sale.

(4) Indian tribes or tribal corporations which utilize the Indian Land Acquisition program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with subpart N of part 1823 of this chapter.

(i) *Costs.* The costs of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to subpart B of part 1924 of this chapter. Expenditures on custodial property as limited in §1955.55 (c) (2) of this subpart will be charged to the borrower's account as recoverable costs.

(j) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposit will be required and the amount of the deposit.

(k) *Lease form.* Form RD 1955-20 approved by OGC will be used by the agency to lease property.

(l) *Lease income.* Lease proceeds will be applied as follows:

(1) *Custodial property.* The proceeds from a lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense.

(2) *Inventory property.* The proceeds from a lease of inventory property will be applied to the lease account.

[62 FR 44397, Aug. 21, 1997, as amended at 64 FR 62568, Nov. 17, 1999; 68 FR 61332, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§§ 1955.67-1955.71 [Reserved]

§ 1955.72 Utilization of inventory housing by Federal Emergency Management Agency (FEMA) or under a Memorandum of Understanding between the Agency and the Department of Health and Human Services (HHS) for transitional housing for the homeless.

(a) *FEMA.* By a Memorandum of Understanding between the Agency and

FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

(b) *HHS.* By a Memorandum of Understanding between the Agency and HHS, inventory housing property not under lease or sales agreement may be made available by lease to public bodies and nonprofit organizations to provide transitional housing for the homeless. See Exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors. Copies of all executed leases and/or questions regarding this program should be referred by State Offices to the Single Family Housing Servicing and Property Management (SFH/SPM) Division in the National Office.

[54 FR 20523, May 12, 1989, as amended at 60 FR 34455, July 3, 1995]

§§ 1955.73-1955.80 [Reserved]

§ 1955.81 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart, or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law, if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the appropriate program Assistant Administrator or

§ 1955.82

upon a request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

[53 FR 35765, Sept. 14, 1988, as amended at 58 FR 58649, Nov. 3, 1993]

§ 1955.82 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA or its successor agency under Public Law 103-354 officials. State supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.83-1955.99 [Reserved]

§ 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0110.

EXHIBIT A TO SUBPART B OF PART 1955—
MEMORANDUM OF UNDERSTANDING
BETWEEN THE FEDERAL EMERGENCY
MANAGEMENT AGENCY AND THE
FARMERS HOME ADMINISTRATION OR
ITS SUCCESSOR AGENCY UNDER PUBLIC
LAW 103-354

EDITORIAL NOTE: Exhibit A is not published in the Code of Federal Regulations. It is available in any FmHA or its successor agency under Public Law 103-354 County Office.

EXHIBIT B TO SUBPART B OF PART 1955—
NOTIFICATION OF TRIBE OF AVAIL-
ABILITY OF FARM PROPERTY FOR
PURCHASE

(To Be Used By Farm Service Agency To
Notify Tribe)

From: County official
To: (Name of Tribe and address)

7 CFR Ch. XVIII (1-1-09 Edition)

Subject: Availability of Farm Property for
Purchase

[To be Used within 90 days of acquisition]

Recently the Farm Service Agency (FSA) acquired title to _____ acres of farm real property located within the boundaries of your Reservation. The previous owner of this property was _____. The property is available for purchase by persons who are members of your tribe, an Indian Corporate entity, or the tribe itself. Our regulations provide for those three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of categories. Following is a more detailed description of these categories:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase of Government inventory property and be able to carry on a family farming operation. Those persons not eligible for FSA's regular programs may also purchase this property as a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities. You may restrict eligible Indian corporate entities to those authorized by your Tribe to purchase lands within the boundaries of your Reservation. These entities also must meet the basic eligibility criteria established for the type of assistance granted.

3. The Tribe itself is also considered eligible to exercise their right to purchase the property. If available, Indian Land Acquisition funds may be used or the property financed as a Non-Program loan on ineligible rates and terms.

We are requesting that you notify the local FSA county office of your selection or intentions within 45 days of receipt of this letter, regarding the purchase of this real estate. If you have questions regarding eligibility for any of the groups mentioned above, please contact our office. If the Tribe wishes to purchase the property, but is unable to do so at this time, contact with the FSA county office should be made.

Sincerely,

County official

[62 FR 44399, Aug. 21, 1997]

EXHIBIT C TO SUBPART B OF PART 1955—
COOPERATIVE AGREEMENT (EXAMPLE)

EDITORIAL NOTE: Exhibit C is not published in the Code of Federal Regulations. It is available in any FmHA or its successor agency under Public Law 103-354 County Office.

EXHIBIT D TO SUBPART B OF PART 1955—
FACT SHEET—THE FEDERAL INTER-
AGENCY TASK FORCE ON FOOD AND
SHELTER FOR THE HOMELESS

EDITORIAL NOTE: Exhibit D is not published in the Code of Federal Regulations. It is available in any FmHA or its successor agency under Public Law 103-354 County Office.

Subpart C—Disposal of Inventory Property

INTRODUCTION

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights, and chattels. It also covers the granting of easements and rights-of-way on inventory property. Credit sales of inventory property to ineligible (non-program (NP)) purchasers will be handled in accordance with Subpart J of Part 1951 of this chapter, except Community and Business Programs (C&BP) and Multi-Family Housing (MFH) which will be handled in accordance with this Subpart. In addition, credit sales of Single Family Housing (SFH) properties converted to MFH will be handled in accordance with this Subpart. This subpart does not apply to Farm Service Agency, Farm Loan Programs, Single Family Housing (SFH) inventory property, or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing Programs. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title.

[72 FR 55019, Sept. 28, 2007, as amended at 72 FR 64123, Nov. 15, 2007]

§ 1955.102 Policy.

The terms “nonprogram (NP)” and “ineligible” may be used interchangeably throughout this subpart, but are identical in their meaning. Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that will en-

able a qualified applicant for one of Farmers Home Administration or its successor agency under Public Law 103-354s (FmHA or its successor agency under Public Law 103-354's) loan programs to meet the objectives of that loan program, preference will be given to the program applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: (RH) property; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

[53 FR 35776, Sept. 14, 1988, as amended at 58 FR 52652, Oct. 12, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.103 Definitions.

As used in this subpart, the following apply:

Approval official. The FmHA or its successor agency under Public Law 103-354 official having loan and grant approval authority authorized under Subpart A of Part 1901 of this chapter.

Auction sale. A public sale in which property is sold to the highest bidder in open verbal competition.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Is an eligible applicant for FO loan assistance in accordance with §1943.12 of subpart A of part 1943 of this chapter or §1980.180 of subpart B of part 1980 of this chapter.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103-354 regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103-354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103-354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103-354 debt.

Capitalization value. The value determined in accordance with subpart E of part 1922 of this chapter.

Closing agent. An attorney or title insurance company which is approved as a loan closing agent in accordance with subpart B of part 1927 of this chapter.

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA or its successor agency under Public Law 103-354.

Credit sale. A sale in which financing is provided to an applicant for the purchase of inventory property.

Decent, safe and sanitary (DSS) housing. Standards required for the sale of Government acquired SFH, MFH and LH structures acquired pursuant to the Housing Act of 1949, as amended. "DSS" housing unit(s) are structures which meet the requirements of FmHA or its successor agency under Public Law 103-354 as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements:

- (1) Are structurally sound and habitable,
- (2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems,

(4) Meet the Thermal Performance Standards as outlined in exhibit D of subpart A of part 1924 of this chapter, and

(5) Are safe; that is, a hazard does not exist that would endanger the safety of dwelling occupants.

Eligible terms. Credit terms, for other than SFH or MFH property sales, prescribed in FmHA or its successor agency under Public Law 103-354 program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For SFH and MFH properties, see the definition of "Program terms."

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) and Rural Housing loans for farm service buildings (RHF).

Homestead protection (FP only). The program which permits former Farmer Program borrowers to lease their former principal residence with an option to buy. See subpart S of part 1951 of this chapter.

Indian Reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian Tribe.

Ineligible terms. Credit terms, for other than SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA or its successor agency under Public Law 103-354's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as sur-

plus. Loans made on ineligible terms are classified as Nonprogram (NP) loans and are serviced accordingly. For SFH and MFH properties, see the definition of "Nonprogram (NP) terms."

Inventory property. Property for which title is vested in the Government and which secured an FmHA or its successor agency under Public Law 103-354 loan or which was acquired from another Agency for program purposes.

Market value. The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

Negotiated sale. A sale in which there is a bargaining of price and/or terms.

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA or its successor agency under Public Law 103-354 requirements for existing housing as described in subpart A of part 1944 of this chapter. It may contain a structure which would meet program standards, however is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

Nonprogram (NP) terms. Credit terms for SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA or its successor agency under Public Law 103-354's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as nonprogram (NP). Loans made on NP terms are classified as NP loans and are serviced accordingly. For property other than SFH and MFH, see the definition of "Ineligible terms."

Organization property. Property for which the following loans were made is

considered organization property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-In-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

Owner. An individual or an entity which owned the farm but who may or may not have been operating the farm at the time the farm was taken into inventory.

Participating broker. A duly licensed real estate broker who has executed a listing agreement with FmHA or its successor agency under Public Law 103–354.

Program property. SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

Program terms. Credit terms for SFH or MFH property sales, prescribed in FmHA or its successor agency under Public Law 103–354 program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For property sales other than SFH and MFH, see the definition of “Eligible terms.”

Regular FmHA or its successor agency under Public Law 103–354 sale. Sale made by other than sealed bid, auction, or negotiation by FmHA or its suc-

cessor agency under Public Law 103–354 employees or real estate brokers.

Regular sale. Sale by FmHA or its successor agency under Public Law 103–354 employees or real estate brokers other than by sealed bid, auction or negotiation.

Safe. No hazard exists on property which would likely endanger the health or safety of occupants or users.

Sealed bid sale. A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

Servicing official. For loans to individuals, as defined in § 1955.53 of subpart B of part 1955 of this chapter, the servicing official is the County Supervisor. For all other loans, excluding insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

Socially disadvantaged applicant (SDA). An applicant who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as a member of a group, without regard to their individual qualities. For entity SDA applicants, the majority interest in the entity must be held by socially disadvantaged individuals. The Agency has identified socially disadvantaged groups as Women, Blacks, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

Suitable property. For FSA inventory property, real property that can be used for agricultural purposes, including those farm properties that may be used as a start-up or add-on parcel of farmland. It would also include a residence or other off-farm site that could be used as a basis for a farming operation. For Agencies other than FSA, real property that could be used to carry out the objectives of the Agency’s loan programs with financing provided through that program.

Surplus property. For FSA inventory property, real property that cannot be used for agricultural purposes including nonfarm properties. For other agencies, property that cannot be used to carry out the objectives of financing

available through the applicable loan program.

[50 FR 23904, June 7, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1955.103, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority.* FmHA or its successor agency under Public Law 103-354 officials will redelegate authorities to the maximum extent possible, consistent with program objectives and available resources.

(1) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(2) Except as provided in paragraph (a)(1) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(3) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(4) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

(b) *Responsibility.* (1) National Office program directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and insuring compliance with FmHA or its successor agency under Public Law 103-354 regulations.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA or its successor agency under Public Law 103-354 regulations and State Supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

[53 FR 27830, July 25, 1988, as amended at 66 FR 7568, Jan. 24, 2001]

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT (CONACT) REAL PROPERTY

§ 1955.105 Real property affected (CONACT).

(a) *Loan types.* Sections 1955.106-1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Reserve Conservation and Development (RC&D); Watershed (WS); Association Recreation; EOC; Rural Renewal; Water Facility; Business and Industry (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporation (NNC); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Homestead Protection, as set forth in Subpart S of Part 1951 of this chapter, is only applicable to Farmer Program loans as defined in § 1955.103 of this subpart.

(b) *Controlled substance conviction.* In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under

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Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of “controlled substance”) prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, “Application for FmHA or its successor agency under Public Law 103-354 Services,” that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(c) *Effects of farm property sales on farm values.* State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA or its successor agency under Public Law 103-354 farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this Part until such time that a subsequent analysis indicates otherwise. The State Director will notify, in writing, the County Supervisor(s) servicing those areas that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

(1) The number of farms and acres that FmHA or its successor agency

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under Public Law 103-354 expects to acquire in inventory.

(2) The number of farms and acres other lenders expect to acquire in inventory.

(3) The number of farms and acres that FmHA or its successor agency under Public Law 103-354 currently has in inventory.

(4) The number of farms and acres other lenders currently have in inventory.

(5) The number of farms not included in paragraphs (c)(3) and (c)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(d) *Highly erodible land.* If farm inventory property contains “highly erodible land,” as determined by the SCS, the lease must include conservation practices specified by the SCS and approved by FmHA or its successor agency under Public Law 103-354 as a condition for leasing. Refer to §1955.137(d) of this subpart for implementation requirements.

[53 FR 35777, Sept. 14, 1988, as amended at 57 FR 19528, May 7, 1992; 58 FR 58649, Nov. 3, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.106 Disposition of farm property.

(a) *Rights of previous owner and notification.* Before property which secured a Farm Credit Programs loan is taken into inventory, the FSA county official will advise the borrower-owner of Homestead Protection rights (see subpart S of part 1951 of this chapter.)

(b) *Racial, ethnic, and gender consideration.* The County Supervisor will make a special effort to insure that prospective purchasers, who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial, ethnic, or gender prejudice, are informed of the availability of the Socially Disadvantaged Program. Emphasis will be placed on providing assistance to such socially disadvantaged applicants in accordance with the applicable sections of subpart A of part 1943 of this chapter.

(c) *Nonprogram (NP) borrowers.* Non-program (NP) borrowers are not eligible for Homestead Protection provisions as set forth in subpart S of part 1951 of this chapter. When it is determined that all conditions of §1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and will be eligible for homestead protection.

[53 FR 35777, Sept. 14, 1988, as amended at 58 FR 58649, Nov. 3, 1993; 62 FR 44399, Aug. 21, 1997]

§ 1955.107 Sale of FSA property (CONACT).

FSA inventory property will be advertised for sale in accordance with the provisions of this subpart. If a request is received from a Federal or State agency for transfer of a property for conservation purposes, the advertisement should be conditional on that possibility. Real property will be managed in accordance with the provisions of subpart B of this part until sold.

(a) *Suitable Property.* Not later than 15 days from the date of acquisition, the Agency will advertise suitable property for sale. For properties currently under a lease, except leases to beginning farmers and ranchers under §1955.66(a)(2)(iii) of subpart B of this part, the property will be advertised for sale not later than 60 days after the lease expires or is terminated. There will be a preference for beginning farmers or ranchers. The advertisement will contain a provision to lease the property to a beginning farmer or rancher for up to 18 months should FSA credit assistance not be available at the time of sale. The first advertisement will not be required to contain the sales price but it should inform potential beginning farmer or rancher applicants that applications will be accepted pending completion of the advertisement process. When possible, the sale of suitable FSA property should be handled by county officials. Farm property will be advertised for sale by publishing, as a minimum, two weekly advertisements in at least two newspapers that are widely circulated in the area in which the farm is located. Consideration will be given to advertising inventory properties in major farm

publications. Either Form RD 1955-40 or Form RD 1955-41, "Notice of Sale," will be posted in a prominent place in the county. Maximum publicity should be given to the sale under guidance provided by §1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian reservations (see §1955.103 of this subpart) shall be responsible for notifying those parties in §1955.66(d)(2) of subpart B of this part.

(1) *Price.* Property will be advertised for sale for its appraised market value based on the condition of the property at the time it is made available for sale. The market value will be determined by an appraisal made in accordance with §761.7 of this title. Property contaminated with hazardous waste will be appraised "as improved" which will be used as the sale price for advertisement to beginning farmers or ranchers.

(2) *Selection of purchaser.* After homestead protection rights have expired, suitable farmland must be sold in the priority outlined in this paragraph. When farm inventory property is larger than family size, the property will be subdivided into suitable family size farms pursuant to §1955.140 of this subpart.

(i) *Sale to beginning farmers/ranchers.* Not later than 135 days from the date of acquisition, FSA will sell suitable farm property, with a priority given to applicants who are classified as beginning farmers or ranchers, as defined in §1955.103, as of the time of sale.

(ii) *Random selection.* The county official will first determine whether applicants meet the eligibility requirements of a beginning farmer or rancher. For applicants who are not determined to be beginning farmers or ranchers, they may request that the State Executive Director provide an expedited review and determination of whether the applicant is a beginning farmer or rancher for the purpose of acquiring inventory property. This review shall take place not later than 30 days after denial of the application. The State Executive Director's review decision shall be final and is not administratively appealable. When there is more than one

beginning farmer or rancher applicant, the Agency will select by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn name will be held in suspense pending sale to the successful applicant. The random selection drawing will be open to the public, and applicants will be advised of the time and place.

(iii) *Notification of applicants not selected to purchase suitable farmland.* When the Agency selects an applicant to purchase suitable farmland, in accordance with this paragraph, all applicants not selected will be notified in writing that they were not selected. The outcome of the random selection by lot is not appealable if such selection is conducted in accordance with this subpart.

(3) *Credit sale procedure.* Subject to the availability of funds, credit sale to program applicants will be processed as follows:

(i) The interest rate charged by the Agency will be the lower of the interest rates in effect at the time of loan approval or closing.

(ii) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(iii) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(A) Form RD 1955-49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of the General Counsel (OGC) will be used.

(B) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(iv) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, see Exhibit M of subpart G of part 1940 of this chapter. All prospective buyers will be notified in writing as a part of the property advertisement

of the presence of highly erodible land and wetlands on inventory property.

(b) *Surplus property and suitable property not sold to a beginning farmer or rancher.* Except where a lessee is exercising the option to purchase under the Homestead Protection provision of subpart S of part 1951 of this chapter, surplus property will be offered for public sale by sealed bid or auction within 15 days from the date of acquisition in accordance with §1955.147 or §1955.148. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with paragraph (a) of this section, but has not sold within 135 days from the date of acquisition will be offered for public sale by sealed bid or auction to the highest bidder as provided in paragraph (b)(1) of this section. All prospective buyers will be notified in writing as part of the property advertisement of the presence of any highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

(1) *Advertising surplus property.* FSA will advertise surplus property for sale by sealed bid or auction within 15 days from the date of acquisition or, for those suitable properties not sold to beginning farmers or ranchers in accordance with this section, within 135 days of the date of acquisition.

(2) *Sale by sealed bid or auction.* Surplus real estate must be offered for public sale by sealed bid or auction and must be sold no later than 165 days from the date of acquisition to the highest bidder. Preference will be given to a cash offer which is at least *percent of the highest offer requiring credit. (*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.) Equally acceptable sealed bid offers will be decided by lot.

(3) *Negotiated sale.* If no acceptable bid is received through the sealed bid or auction process, the State Executive Director will sell surplus property at the maximum price obtainable without further public notice by negotiation with interested parties, including all previous bidders. The rates and terms

offered for a credit sale through negotiation will be within the limitations established in paragraph (b) (4) of this section. A sale made through negotiation will require a bid deposit of not less than 10 percent of the negotiated price in the form of a cashier's check, certified check, postal or bank money order, or bank draft payable to FSA. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.] Equally acceptable offers will be decided by lot.

(4) *Rates and terms.* Subject to the availability of funds, rates and terms for Homestead Protection will be in accordance with subpart S of part 1951 of this chapter. Sales of suitable property offered to program eligible applicants will be on rates and terms provided in subpart A of part 1943 of this chapter. Surplus property and suitable property which has not been sold to program eligible applicants will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. The State Executive Director will determine the loan terms for surplus property within these limitations. A credit sale made on ineligible terms will be closed at the interest rate in effect at the time the credit sale was approved. After extensive sales efforts where no acceptable offer has been received, the State Executive Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return for the Government. The term of financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

[62 FR 44399, Aug. 21, 1997, as amended at 64 FR 62569, Nov. 17, 1999; 68 FR 7700, Feb. 18, 2003]

§ 1955.108 Sale of (CONACT) property other than FSA property.

Program officials will immediately contact the National Office whenever they acquire real property to obtain further instructions on the time frames and procedures for advertising and disposing of such property.

[62 FR 44401, Aug. 21, 1997]

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," should be used for all eligible FSA applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of FSA loan. Purchasers requesting credit on ineligible terms, except for C&BP, will be handled in accordance with subpart J of part 1951 of this chapter. For C&BP, information will be provided which is similar to an application including financial information required for the respective loan program to establish financial stability, creditworthiness and repayment ability.

(b) [Reserved]

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to the Agency.

(d)-(e) [Reserved]

(f) *Earnest money.* Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's downpayment.

(g) *Closing and reporting sales.* Title clearance, loan closing and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA or its successor agency

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under Public Law 103-354 1955-49, in accordance with §1955.141(a) of this subpart.

(h) *Classification.* Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly.

(i) [Reserved]

(j) *Form FmHA or its successor agency under Public Law 103-354 1910-11.* “Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.” The County Supervisor or District Director must review Form FmHA or its successor agency under Public Law 103-354 1910-11 “Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,” with the applicant, and the form must be signed by the applicant.

[53 FR 35780, Sept. 14, 1988, as amended at 54 FR 29333, July 12, 1989; 58 FR 52652, Oct. 12, 1993; 60 FR 34455, July 3, 1995; 62 FR 44401, Aug. 21, 1997; 68 FR 61332, Oct. 28, 2003]

RURAL HOUSING (RH) REAL PROPERTY

§ 1955.110 [Reserved]

§ 1955.111 Sale of real estate for RH purposes (housing).

Sections 1955.112 through 1955.120 of this subpart pertain to the sale of acquired property pursuant to the Housing Act of 1949, as amended, (RH property). Single family units (generally which secured loans made under section 502 or 504 of the Housing Act of 1949, as amended) are referred to as SFH property. All other property is referred to as MFH property. Notwithstanding the provisions of §§1955.112 through 1955.118 of this subpart, §1955.119 is the governing section for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for the homeless.

[55 FR 3942, Feb. 6, 1990]

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA or its successor agency under Public Law 103-354.* Sales customarily will be made by FmHA or its successor agency under Public Law 103-354 personnel in accordance with §§1955.114 and 1955.115 of this subpart (as appropriate) when staffing and workload permit and inventory levels

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do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with §1955.146 of this subpart is of utmost importance when this method is used. No earnest money will be collected in connection with sales by FmHA or its successor agency under Public Law 103-354. For MFH, this method will always be used unless another method is authorized by the Assistant Administrator, Housing.

(b) *Real estate brokers.* The County Office will utilize the services of real estate brokers for regular sales when there are five or more properties in inventory at any one time during the calendar year. When real estate brokers are used, first consideration will be given to utilizing such services under an exclusive broker contract as provided for in §1955.130 of this subpart. Only when it is determined that an exclusive broker contract is not practicable, will the services of real estate brokers under an open listing agreement be utilized. The use of real estate brokers in offices having less than five properties in inventory at any one time during the calendar year is optional provided staffing and workload permit diligent and timely sales by FmHA or its successor agency under Public Law 103-354. When broker services for SFH are utilized, the FmHA or its successor agency under Public Law 103-354 office will not conduct direct sales, but will refer inquiries to the broker or list of participating brokers. However, if FmHA or its successor agency under Public Law 103-354 has been approached by a potential buyer desiring to purchase a specific property and a sales contract has been accepted, the property will not be listed for sale with real estate brokers. Earnest money held by real estate brokers will be used to pay the purchaser's closing costs with any balance of the costs to be paid by the purchaser. Any required earnest money deposit is exclusive of any required credit report fee. Brokers may only be used for MFH with authorization of the Assistant Administrator, Housing.

(c) *Sealed bid or auction.* The use of sealed bids or auctions is an effective method by which to sell inventory property. If the State Director determines that NP SFH property has been

given adequate market exposure and that diligent sales efforts have not produced buyers, or under unusual circumstances as outlined in §1955.115(a)(1) of this subpart, he/she will authorize sale by sealed bid or auction unless additional sales methods appear more prudent. Program SFH property will be sold by regular sale *only*, unless the Assistant Administrator, Housing, authorizes sale by sealed bid or auction. The State Director will request such authorization when all reasonable marketing efforts fail to produce buyers and the conditions of §1955.114(a)(6) of this subpart have been met. The case file, including documentation of all marketing efforts, will be forwarded to the Assistant Administrator, Housing, ATTN: Single Family Housing Servicing and Property Management (SFH/SPM) Division, to request authority to sell program property by sealed bid or auction. The decision to utilize a sealed bid or auction must be carefully weighed when the property is located in a subdivision, since the resultant sale may have an adverse effect on surrounding property values. Detailed guidance for conducting sealed bid sales is provided in §1955.147 of this subpart and for conducting auction sales in §§1955.131 and 1955.148 of this subpart.

[53 FR 27831, July 25, 1988]

§ 1955.113 Price (housing).

Real property will be offered or listed for its present market value, as adjusted by any administrative price reductions provided for in this section. Market value will be based upon the condition of the property at the time it is made available for sale. However, when a section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or market value, less administrative price reductions, if any. Market value for multi-family housing projects will be determined through an appraisal conducted in accordance with subpart B to part 1922 of this chapter. Multi-family housing appraisals conducted shall reflect the impact of any restrictive-use provi-

sions attached to the project as part of the credit sale.

(a) *SFH price reduction.* SFH property will be appraised at any time additional market data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. For ease in computing dates for administrative price reductions, each month is assumed to have thirty days. The following schedule of administrative price reductions will be followed:

(1) *Program property.* If program property has not sold after being actively marketed at the current appraised value for 45 days during which time program applicants have exclusive rights to purchase the property, plus an additional 30 days to any offeror, the price will be administratively reduced by 10 percent of the appraised value. During the first 45 days after the price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If at the end of this 75-day period the property remains unsold, a second price reduction of 10 percent of the appraised value will be made. During the first 45 days after the second price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If the property does not sell within 75 days of the second price reduction, further guidance is provided in §1955.114(a)(6) and Exhibit D (available in any FmHA or its successor agency under Public Law 103-354 office) of this subpart.

(2) *Nonprogram (NP) property.* If NP property has not been sold after being actively marketed for 45 days, the price will be administratively reduced by 10 percent of the appraised value. If the property remains unsold after an additional 45-day period of active marketing, one further price reduction of 10 percent of the appraised value will be made. If the property does not sell

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within 45 days of the second price reduction, further guidance is provided in §1955.115(a)(1) and Exhibit D (available in any FmHA or its successor agency under Public Law 103-354 office) of this subpart.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions in price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

[53 FR 27831, July 25, 1988; 54 FR 6875, Feb. 15, 1989, as amended at 58 FR 38927, July 21, 1993]

§ 1955.114 Sales steps for program property (housing).

Program property will be sold by regular sale unless the Assistant Administrator, Housing, authorizes another method. If the State Director determines that program property has been given adequate market exposure and that diligent sales efforts including the use of real estate brokers has not produced purchasers, the State Director may request the Assistant Administrator, Housing, to authorize sale by sealed bid or public auction as specified in §1955.112(c) of this subpart.

(a) *Single family housing (SFH).* Sale prices will be established in accordance with §1955.113 of this subpart. The County Supervisor will either offer the property or list it with real estate brokers for regular sale under the provisions of §1955.112 of this subpart. See Exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) which outlines chronologically the sales steps for program property.

(1) The following provisions apply to all offers to purchase SFH inventory property:

(i) Program property will be available for purchase only by program applicants for the first 45 days from the date of the initial offering or listing, and for the first 45 days following the date of any reduction in price. During

these 45-day period(s), offers from others may be received and held until the first business day following the 45-day period (the 46th day) when any such offer(s) will be considered as received on the 46th day along with offers received on that same (46th) day. After the expiration of each 45-day exclusive period for program applicants, program property may be purchased by offerors requesting credit on program terms, nonprogram (NP) terms or for cash in the order of priority set forth in paragraph (a)(3) of this section.

(ii) In regular sales, an acceptable offer *must* be for at least the sale price. No offer for less than the sale price will be considered, accepted or held. Offers will be considered as acceptable or unacceptable independent of any accompanying credit request (on program or NP terms).

(iii) All offers will be date-stamped when received. Selection of equally acceptable offers, considering offers in the category order outlined in paragraph (a)(3) of this section, received on the same business day will be made by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as back-up offers pending sale to the successful offeror, unless the offeror has specifically noted on the offer that it may not be held as a back-up offer.

(iv) An offer may be submitted any time after the effective date the property is available for sale or any price reduction; however, it is not considered until five business days after the effective date. An offer received during the five business day period is considered on the 6th day, at the same time as any offer received on the 6th day.

(v) If an offer subject to FmHA or its successor agency under Public Law 103-354 financing is accepted, and the offeror's credit request is later denied, the next offer (if any) will be accepted regardless of whether the rejected applicant appeals the adverse decision (NP applicants do not receive appeal rights). In cases involving program property, if no back-up offers are on hand, the property will be reoffered/re-listed for sale utilizing the balance of any outstanding retention period.

Property will not be held off the market pending the outcome of an appeal.

(2) *Effective date and method of offering.* When ready for sale, each property will be offered for sale by use of Form FmHA or its successor agency under Public Law 103-354 1955-43 unless FmHA or its successor agency under Public Law 103-354 has on hand a signed offer from a program applicant to purchase a specific program property or an offer from any offeror to purchase a specific NP property. The date the form is posted or mailed to real estate brokers is the effective date the offer for sale has begun.

Listings will provide for sales on program and NP terms, as appropriate.

(3) *Priority of offers.* For program properties, acceptable offers received after the 45-day retention period specified in paragraph (a)(1)(i) of this section have priority in the order given in paragraphs (a)(3) (i), (ii), (iii) and (iv) of this section. For NP properties, acceptable offers have priority in the order given in paragraphs (a)(3) (ii), (iii) and (iv) of this section. Program applicants may purchase NP property, however, credit may only be extended on NP terms.

(i) Offers with requests for credit on program terms. An offer from an applicant requesting credit on program terms in excess of the sale price will be considered as equally acceptable with other acceptable offers from program applicants and will be sold for the sale price.

(ii) Cash offers, in descending order from highest to lowest, provided the cash offer is higher than any other offer which falls into the parameters of paragraph (a)(3)(iii) of this section multiplied by the current cash preference percentage listed in exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office).

(iii) Offers with requests for credit on NP terms in descending order from highest to lowest, for more than the sale price. An offer with a request for credit in excess of the market value of the property will not be accepted. If an offer of this type is received, the offeror will be given the opportunity to re-

duce the credit request to the market value (or lower) with no change to be made in the offered price.

(iv) Offers with requests for credit on NP terms for the sale price.

(4) *Back-up offers and notification to offerors.* Back-up offers will be taken in accordance with paragraph (a)(1)(iii) of this section. County offices utilizing the services of real estate brokers will advise the brokers of changes in the status of the property. County offices not utilizing real estate brokers will advise offerors of changes in the status of the property utilizing exhibit E of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) or similar format. Use of exhibit E is optional in offices utilizing real estate brokers.

(5) *Finalizing sales.* Credit sales on program terms will be made in accordance with §1955.117 of this subpart and 7 CFR part 3550. Cash sales will be handled in accordance with §1955.118 of this subpart and credit sales on NP terms will be made in accordance with subpart J of part 1951 of this chapter.

(6) *Unsold property.* If program property remains unsold after eight months of active marketing, the case file, with documentation of all marketing efforts, will be forwarded to the State Office for review with a recommendation of future sales efforts. The State Director will determine whether a request should be made to the Assistant Administrator, Housing, to sell the property by sealed bid or auction, or whether additional guidance such as, but not limited to advertising, reappraisal, offering a special effort sales bonus, or 20-year amortization factor (with balloon after 10 years) on NP financing may facilitate a sale.

(b) *Multiple family housing.* The sale price will be established in accordance with §1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in §1955.146 of this subpart. The sale information will include a sale price, any restrictive-use provisions the project will be subject to and made part of the title, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program,

which will be reviewed by the State Director or designee. The sale/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by FmHA or its successor agency under Public Law 103-354 will be notified in writing by the approval official, and for program applicants, given appeal rights in accordance with subpart B of part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but not on the sale date. All offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other FmHA or its successor agency under Public Law 103-354 employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer. The selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA or its successor agency under Public Law 103-354 1955-

40, or another appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization from the Assistant Administrator, Housing. Cash sales of program property will remain subject to restrictive-use provisions determined needed and included in the advertisement. The deed will contain the applicable restrictive-use provisions. Tenants and prospective tenants will receive the applicable protections for the specific restrictive-use provision contained in 7 CFR part 3560, subpart N.

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations, public bodies or for-profit entities, which have good records of providing low income housing under section 515, will be considered by FmHA or its successor agency under Public Law 103-354 for the purchase of multiple SFH units for conversion to MFH. Section 514 credit sale mortgages may contain repayment terms up to 33 years and section 515 credit sale mortgage terms may be up to 50 years.

(1) The price provisions of §1955.113 and the processing provisions for MFH in §1955.117 of this subpart apply to such a conversion.

(2) The provisions of §1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner on units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD-622, "Notice of Preapplication Review Action." A preapplication with documentation as required by the Agency, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator, Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of 7 CFR part 3560, as modified by §1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are

not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the requirements of 7 CFR part 3560, subpart K.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suited for the SFH program, it may be offered for sale as a SHF unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to a program RH applicant on *program terms only*—not for cash or on NP terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or its successor agency under Public Law 103-354 or through real estate brokers) must state this restriction.

[53 FR 27832, July 25, 1988, as amended at 55 FR 3942, Feb. 6, 1990; 56 FR 2257, Jan. 22, 1991; 58 FR 38927, July 21, 1993; 58 FR 38949, July 21, 1993; 58 FR 52652, Oct. 12, 1993; 67 FR 78329, Dec. 24, 2002; 69 FR 69106, Nov. 26, 2004]

§ 1955.115 Sales steps for nonprogram (NP) property (housing).

The appropriate FmHA or its successor agency under Public Law 103-354 office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect changes in market conditions, repairs and improvements, if any. Form FmHA or its successor agency under Public Law 103-354 1955-43 for SFH and 1955-40 for MFH will be completed to offer the property for sale. The advertising requirements and deed restrictions in § 1955.116 of this subpart apply if the property does not meet FmHA or its successor agency under Public Law 103-354 DSS standards.

(a) *Single Family Housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash in accordance with § 1955.118 or credit on NP terms as provided in subpart J of part 1951 of this chapter. See exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) which

outlines chronologically the sales steps for NP properties.

(1) *Sale by sealed bid or auction.* If a NP property has not sold within 150 days after being offered for sale, the inventory case file with documentation of marketing efforts will be submitted to the State Director. The State Director will authorize sale by sealed bid or auction in accordance with § 1955.112(c) of this subpart unless additional sales methods appear more prudent. Use of the sealed bid or auction method may be considered as an initial sales effort under special or unusual circumstances such as, but not limited to, structures which have been substantially destroyed by fire or other causes.

(2) *Sale as chattel.* If efforts to sell NP property by sealed bid or auction prove unsuccessful, the structure(s) may be sold as chattel (for chattel or salvage value, as appropriate) when authorized by the State Director. When the structure is to be sold as chattel (exclusive of land) further guidance is provided in §§ 1955.121, 1955.122 and 1955.141(b) of this subpart. If no offer is received, the structure(s) may be demolished and removed from the site and then the site offered for sale. If this method is utilized, FmHA or its successor agency under Public Law 103-354 will attempt to have the structure removed in exchange for the salvageable materials by contract, otherwise, will solicit for contracts to have the structure removed in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(3) *Sale of vacant land.* When FmHA or its successor agency under Public Law 103-354 has vacant land in inventory which was security for an SFH loan, the land will be sold in accordance with this subparagraph. When the lot meets the requirements of 7 CFR part 3550, and a program applicant desires to purchase the lot and construct a dwelling, a credit sale will not be made. Instead, one section 502 loan will be made which will include funds for the purchase of the lot and construction of a dwelling. Otherwise, the lot will be sold for cash or on NP terms with a loan not to exceed ten years in term and amortization.

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(b) *Multiple family housing.* Sales steps will be the same as for program MFH property as provided in §1955.114(b) of this subpart except that sales must be for cash or on NP terms as set forth in §1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell NP MFH property, authority to use that method of sale must be requested from the Assistant Administrator, Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review. If the housing is sold out of the FmHA or its successor agency under Public Law 103-354 program as NP property, the closing of the sale may not take place until tenants have received all notifications and benefits afforded to tenants in prepaying projects in accordance with 7 CFR part 3560, subpart N.

[53 FR 27833, July 25, 1988, as amended at 58 FR 38928, July 21, 1993; 58 FR 52652, Oct. 12, 1993; 67 FR 78329, Dec. 24, 2002; 69 FR 69106, Nov. 26, 2004]

§1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

For real property (exclusive of improvements) which is unsafe, refer to §1955.137(e) of this subpart for further guidance. For all other housing inventory property which does not meet decent, safe and sanitary (DSS) standards, the provisions of this section apply.

(a) *Notices and advertising.* If the inventory property has a single family dwelling or MFH unit thereon which does not meet DSS standards as defined in §1955.103 of this subpart, but which could meet such standards through the repair or renovation activities of the future owner, any "Notice of Real Property For Sale," "Notice of Sale," or other advertisement used in conjunction with advertising the property for sale must include the

following language which is contained in Form FmHA or its successor agency under Public Law 103-354 1955-44, "Notice of Residential Occupancy Restriction":

This property contains a dwelling unit or units which FmHA or its successor agency under Public Law 103-354 has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which this property will be conveyed will contain a covenant restricting the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is repaired, renovated or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480. The property must be repaired and/or renovated as follows*:

*For advertisements, the sentence preceding the asterisk may be deleted and replaced with the following, or similar sentence: "Contact FmHA or its successor agency under Public Law 103-354 (or any real estate broker/name of exclusive broker) for a list of items which must be repaired/renovated." For notices other than advertising, insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

—Replace flooring and floor joists in kitchen and bathroom.

—Drill new well to provide for an adequate and potable water supply.

—Hook-up to community water and sewage system now being installed.

—Provide a functionally adequate, safe and operable* system. *Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.

—Install*. *Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.

—Install R-* insulation in basement walls or ceiling, R-* insulation in attic, and storm windows/doors throughout. *Insert appropriate R-Values to meet Thermal Performance Standards.

(b) *Sale agreements.* If a housing structure in inventory does not meet DSS standards, Form FmHA or its successor agency under Public Law 103-354 1955-44 must be attached to Forms FmHA or its successor agency under Public Law 103-354 1955-45 or FmHA or its successor agency under Public Law 103-354 1955-46, as appropriate, to provide notification of the deed restriction and required repairs/renovations before the dwelling can be used for residential purposes.

(c) *Quitclaim Deed.* The following, the original of Form FmHA or its successor agency under Public Law 103-354 1955-44, or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the Quitclaim Deed for properties which do not meet DSS standards at the time of sale but which could through the repair/renovation activities of the future owner:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration or its successor agency under Public Law 103-354 (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or its successor agency under Public Law 103-354 or the unit(s) has been completely razed, upon application to the Farmers Home Administration or its successor agency under Public Law 103-354 in accordance with its regulations, the subject property may be released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated as follows: *'' *Insert the same items referenced in the listing notice(s) and sale agreement which are necessary to make the dwelling unit(s) meet DSS standards.

(d) *Release of restrictive covenant.* Upon request of the property owner for a release of the restrictive covenant, FmHA or its successor agency under Public Law 103-354 will inspect the property to ensure that the repairs/renovations outlined in the restrictive covenant have been properly completed or the structure(s) razed. A State Supplement outlining the procedure for releasing the restrictive covenant will be issued with the advice of OGC.

[53 FR 27834, July 25, 1988]

§ 1955.117 Processing credit sales on program terms (housing).

The following provisions apply to all credit sales on program terms:

(a) *Offers.* Form FmHA or its successor agency under Public Law 103-354 1955-45 will be used to document the offer and acceptance for regular FmHA or its successor agency under Public Law 103-354 sales. The contract is accepted prior to processing Form FmHA or its successor agency under Public Law 103-354 410-4, "Application for Rural Housing Assistance (Non-Farm Tract)," for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA or its successor agency under Public Law 103-354 regulations pertaining to the type of credit being extended will be followed in making credit sales on program terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security, less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 3 percent of the purchase price as a cash downpayment. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and restrictive-use provisions specified by the respective program requirements.

(c) *Approval.* Forms FmHA or its successor agency under Public Law 103-354 1940-1 or RD 3560-51, as appropriate, will be used to approve a credit sale even though no obligation of funds is required.

(d) *Downpayment.* When a downpayment is made, it will be collected at closing.

(e) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA or its successor agency under Public Law 103-354 will be the lower of the interest rate in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds.

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Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling. Any closing costs which are legally or customarily paid by the seller will be paid by FmHA or its successor agency under Public Law 103-354 and charged to the inventory account as a nonrecoverable cost items.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed in accordance with §1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH credit sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to §1955.142 of this subpart.

[53 FR 27834, July 25, 1988; 54 FR 6875, Feb. 15, 1989, as amended at 58 FR 38928, July 21, 1993; 68 FR 61332, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

(a) *Cash sales.* Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser.

(b) *Credit sales.* The following provisions apply to MFH credit sales on NP terms:

(1) *Offers.* Form FmHA or its successor agency under Public Law 103-354 1955-45 or FmHA or its successor agency under Public Law 103-354 1955-46, as appropriate, will be used to document the offer and acceptance. Contract acceptance is made prior to processing a request for credit on NP terms.

(2) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type property involved. Individual credit reports will be ordered for each individual applicant and each principal within an applicant entity in accordance with subpart B of part 1910 of this chapter. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity in accordance with subpart C of part 1910 of this chapter.

(3) *Approval.* Form RD 3560-51 will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(4) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing.

(5) *Interest rate.* The Section 515 RRH interest rate plus ½ percent will be charged on all types of housing credit sales, except SFH. Refer to exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(6) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

(7) *Modification of security instruments.* If applicable to the type property being sold, modification of security instruments may be made. On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, restrictive-use provisions on MFH projects, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and FmHA or its successor agency under Public Law 103-354 initialing the changes.

(8) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(i) The property will be conveyed in accordance with §1955.141(a) of this subpart.

(ii) The purchaser will pay his/her own closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser. Any closing costs which are legally or customarily paid by the seller will be paid by FmHA or its successor agency under Public Law 103-354 from the downpayment.

(iii) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

(iv) When more than one property is bought by the same buyer and the transactions are closed at the same time, a separate promissory note will be prepared for each property, but one mortgage will cover all the properties.

(9) *Reporting.* After the sale is closed, it will be reported according to §1955.142 of this subpart.

(10) *Classification.* MFH credit sales on NP terms will be classified as NP loans and serviced accordingly.

(11) *Form FmHA or its successor agency under Public Law 103-354 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* The County Supervisor or District Director must review Form FmHA or its successor agency under Public Law 103-354 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant.

[53 FR 27835, July 25, 1988, as amended at 54 FR 29333, July 12, 1989; 55 FR 3942, Feb. 6, 1990; 58 FR 38928, July 21, 1993; 58 FR 52653, Oct. 12, 1993; 68 FR 61332, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§ 1955.119 Sale of SFH inventory property to a public body or nonprofit organization.

Notwithstanding the provisions of §1955.111 through §1955.118 of this subpart, this section contains provisions for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for the homeless. A public body or nonprofit organization is a nonprogram applicant. All other SFH credit sales on nonprogram terms will be handled in accordance with subpart J of part 1951 of this chapter.

(a) *Method of sale.* The method of sale is according to §1955.112 of this subpart. Upon request from a public body or nonprofit organization, FmHA or its successor agency under Public Law 103-354 will provide a list of all SFH inventory property, regardless of whether it is listed for sale with real estate brokers. The list will indicate whether the property is program or nonprogram. Upon written notice of the organization's intent to buy a specific property, if it is not under a sale contract, FmHA or its successor agency under Public Law 103-354 will withdraw the property from the market for a period not to exceed 30 days to provide the organization sufficient time to execute Form FmHA or its successor agency under Public Law 103-354 1955-45.

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(b) *Price.* The price of the property will be established according to §1955.113 of this subpart; however, a 10 percent discount of the listed price is authorized on nonprogram property. No discount is authorized on program property.

(c) *Decent, safe and sanitary (DSS) standards.* If an organization wants to buy a property which does not meet DSS standards, FmHA or its successor agency under Public Law 103-354 will repair it to meet those standards, including thermal performance standards, unless FmHA or its successor agency under Public Law 103-354 determines it is not feasible to do so according to §1955.64(a)(1)(ii) of subpart B of part 1955 of this chapter. The price will be adjusted to reflect any resulting change in value. Cosmetic repairs, if needed, such as painting, floor covering, landscaping, etc., are the responsibility of the organization. Form FmHA or its successor agency under Public Law 103-354 1955-44, itemizing the required repairs and FmHA or its successor agency under Public Law 103-354's agreement to complete them before closing will be made a part of Form FmHA or its successor agency under Public Law 103-354 1955-45, the sales contract, before it is signed. Required repairs must be completed before closing so DSS restrictions will not be required in the deed.

(d) *Approval and closing.* Processing cash sales or MFH credit sales on non-program terms is according to §1955.118 of this subpart, except as follows:

(1) *Earnest money deposit.* No earnest money deposit is required.

(2) *Downpayment.* No downpayment is required.

(3) *Term of note.* The term of the note may not exceed 30 years.

[55 FR 3942, Feb. 6, 1990, as amended at 58 FR 52653, Oct. 12, 1993]

§ 1955.120 Payment of points (housing).

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a non-FmHA or its successor agency under Public Law 103-354 loan, the County Supervisor may authorize the payment by FmHA or its successor agency under Public Law 103-354 of not

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more than three points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA or its successor agency under Public Law 103-354 1955-45 and will be fixed as of the date the form is signed by the appropriate FmHA or its successor agency under Public Law 103-354 official. Points will *not* be paid to reduce the purchaser's interest rate. The payment will be deducted from the funds to be received by FmHA or its successor agency under Public Law 103-354 at closing.

[53 FR 27836, July 25, 1988. Redesignated at 55 FR 3942, Feb. 6, 1990, as amended at 58 FR 52653, Oct. 12, 1993; 68 FR 61332, Oct. 28, 2003]

CHATTEL PROPERTY

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122 through 1955.124 of this subpart prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid, regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified FmHA or its successor agency under Public Law 103-354 employee.

§ 1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the method(s) considered most appropriate. If the chattel is not sold within 180 days after acquisition, assistance will be requested as outlined in §1955.143 of this subpart.

(a) *Sale to beginning farmers or ranchers.* Beginning farmers or ranchers obtaining special OL loan assistance under §1941.15 of subpart A of part 1941 of this chapter will receive priority in the purchase of farm equipment held in government inventory during the commitment period. The County Supervisor will notify such applicants/borrowers of any farm equipment held in government inventory within the service area of the FmHA or its successor agency under Public Law 103-354 County Office. These applicants/borrowers

will be given 10 working days to respond that they are interested in purchasing any or all items of equipment at the appraised fair market value established by FmHA or its successor agency under Public Law 103-354. FmHA or its successor agency under Public Law 103-354 Form Letter 1955-C-1 will be used to notify applicants/borrowers of the availability of farm equipment in FmHA or its successor agency under Public Law 103-354 inventory. The equipment must be essential to the success of the operation described in the loan application in order for the applicant to have an opportunity to purchase such equipment. The County Supervisor will determine what equipment is essential.

(b) *Regular sale.* Chattels will be sold by FmHA or its successor agency under Public Law 103-354 employees at market value to program applicants. Form FmHA or its successor agency under Public Law 103-354 440-21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

(c) *Auctions.* Section 1955.148 of this subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section.

(1) *Established public auction.* An established public auction is an auction that is widely advertised and held on a regularly scheduled basis at the same facility. This method of sale is particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) *Other auctions.* Other auctions, whether conducted by FmHA or its successor agency under Public Law 103-354 employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels, and for the sale of chattels in conjunction with the auction of real property. A minimum of 5 days public notice will be given prior to the date of auction.

(d) *Sealed bid sales.* Section 1955.147 of this subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale, this method has advantages over auction sales. It re-

quires, however, additional steps in the event any established minimum price is not obtained. Preference will be given to a cash offer which is at least ___*percent of the highest offer requiring credit.

[*Refer to exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the current percentage.]

(e) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented.

(f) *Notification.* In many States the original owner of the chattel property must personally be notified of the sale date and method of sale within a certain time prior to the sale. The State Director then will issue a State supplement clearly stating what notices are to be sent, if any. County Supervisor will review State supplements to determine what notices must be sent to the previous owner of the chattel property prior to FmHA or its successor agency under Public Law 103-354 taking action to sell the property.

No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA or its successor agency under Public Law 103-354 1955-47, "Bill of Sale 'A'—Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA or its successor agency under Public Law 103-354 Instruction 1951-B (available in any FmHA or its successor agency under Public Law 103-354 office). A State Supplement, when needed, will be prepared with the assistance of OGC to provide additional

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guidance on negotiated sales and to insure compliance with State laws.

[50 FR 23904, June 7, 1985, as amended at 53 FR 35780, Sept. 14, 1988; 58 FR 48290, Sept. 15, 1993; 58 FR 58650, Nov. 3, 1993; 62 FR 44401, Aug. 21, 1997; 68 FR 61332, Oct. 28, 2003]

§ 1955.123 Sale procedures (chattel).

(a) *Sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Chattel sales will be made to eligible purchasers in accordance with the provisions of this chapter. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. (*Refer to exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the current percentage.) Credit sales made to ineligible purchasers will require not less than a 10 percent downpayment with the remaining balance amortized over a period not to exceed 5 years. The interest rate for ineligible purchasers will be the current ineligible interest rate for Farmer Programs property set forth in exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office). Form FmHA or its successor agency under Public Law 103-354 431-2, in conjunction with Form FmHA or its successor agency under Public Law 103-354 440-32, "Request for Statement of Debts and Collateral," may be used to show financial capability. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove chattel sales on eligible terms in accordance with the respective loan approval authorities in exhibit C of FmHA or its successor agency under Public Law 103-354 Instruction 1901-A (available in any FmHA or its successor agency under Public Law 103-354 office). Applicants who have been determined ineligible, and eligible applicants who have their application disapproved, will be notified of the opportunity to appeal in accordance with subpart B of part 1900 of

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this chapter. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove chattel sales on ineligible terms in accordance with the respective type of program approval authorities in exhibit E of FmHA or its successor agency under Public Law 103-354 Instruction 1901-A (available in any FmHA or its successor agency under Public Law 103-354 office.)

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order or personal check (not in excess of \$500) made payable to the agency. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. If full payment is not received at the time of sale, the offer will be documented by Form RD 1955-45 or Form RD 1955-46 where the chattel is sold jointly with real estate by regular sale.

(c) *Transfer of title.* Title will be transferred to a purchaser in accordance with §1955.141(b) of this subpart.

(d) *Reporting sale.* Sales will be reported in accordance with §1955.142 of this subpart.

(e) *Reporting and disposal of inventory property not sold.* Refer to §§1955.143 and 1955.144 of this subpart for additional guidance in disposing of problem property.

[50 FR 23904, June 7, 1985, as amended at 58 FR 52653, Oct. 12, 1993; 58 FR 58650, Nov. 3, 1993; 68 FR 61332, Oct. 28, 2003]

§ 1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory accounts based on the value of the property sold. Form FmHA or its successor agency under Public Law 103-354 440-21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale of Form FmHA or its successor agency under Public Law 103-354 1955-45 or Form FmHA or its successor agency under Public Law 103-354

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1955-46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§§ 1955.125–1955.126 [Reserved]

USE OF CONTRACTORS TO DISPOSE OF INVENTORY PROPERTY

§ 1955.127 Selection and use of contractors to dispose of inventory property.

Sections 1955.128 through 1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office) is applicable for procurement of nonpersonal services.

[53 FR 27836, July 25, 1988]

§ 1955.128 Appraisers.

(a) *Real property.* The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the Assistant Administrator, Housing, when unusual circumstances preclude the use of a qualified FmHA or its successor agency under Public Law 103-354 MFH appraiser.) The decision will be based on the availability of comparables, the capability and availability of personnel, and the number and type of properties (such as large farms and business property) requiring valuation. For Farmer Programs real estate properties, all contract (fee) appraisers should include the sales comparison, income (when applicable), and the cost approach to value. All FmHA or its successor agency under Public Law 103-354 real estate contract appraisers must be certified as State-Certified General Appraisers.

(b) *Chattel property.* For Farmer Programs chattel appraisals, the contractor/appraiser completing the report must meet at least one of the following qualifications:

(1) Certification by a National or State appraisal society.

(2) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for a certification in a National or State appraisal society.

(3) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

[58 FR 58650, Nov. 3, 1993]

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential;

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed in Exhibit D of FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they do business.

(a) *Type of listings.* The State Director may authorize use of exclusive listings during any calendar year. Since the Agency receives many more marketing services for its commission dollar and saves time listing the property with only one broker, it is strongly recommended that all County Offices be authorized the use of exclusive brokers.

(1) *Exclusive broker contract.* An exclusive broker contract provides for the selection of one broker by competitive

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negotiation who will be the only authorized broker for the FmHA or its successor agency under Public Law 103-354 office awarding the contract within a defined area and for specific property or type of property. Criteria will be specified in the solicitation together with a numerical weighting system to be used (usually 1-100). Responses will be calculated on the basis of the criteria such as personal qualifications, membership in Multiple Listing Service (MLS), previous experience with FmHA or its successor agency under Public Law 103-354 sales, advertising plans, proposed innovative promotion methods, and financial capability. The responsibilities of the broker under an exclusive broker contract exceed those of the open listing agreement and therefore, an exclusive broker contract is the preferred method of listing properties.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed under the terms and conditions of Form FmHA or its successor agency under Public Law 103-354 1955-42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, or a notice sent to all real estate brokers in the counties served by the FmHA or its successor agency under Public Law 103-354 office, informing brokers that sales services are being requested. The advertising will be substantially similar to the example given in Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property. When this method is used, the FmHA or its successor agency under Public Law 103-354 office is responsible for ensuring that adequate advertising is performed to effectively market the property.

(b) *Listing notices.* Forms FmHA or its successor agency under Public Law 103-354 1955-40 or FmHA or its successor agency under Public Law 103-354 1955-43, as appropriate, will be used to provide brokers with notice of initial listing, withdrawal, price change, terms

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change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* All offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA or its successor agency under Public Law 103-354. Priority rules for specific categories of property are:

(1) *Program SFH.* See §1955.114(a) of this subpart.

(2) *Program MFH.* Offers will be considered from program applicants only.

(3) *NP SFH.* See §1955.115(a) of this subpart.

(4) *NP MFH.* See §1955.115(b) of this subpart.

(5) *Suitable and surplus FSA CONACT.* See §1955.107 of this subpart.

(6) *Suitable and Surplus Non-FSA CONACT.* See §1955.108 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale.

(e) *Earnest money.* The broker will collect earnest money in the amount specified in paragraph (e)(1) of this section when a sale contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA or its successor agency under Public Law 103-354. When a contract is cancelled because FmHA or its successor agency under Public Law 103-354 rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single family properties or MFH projects of 2 to 5 units, \$50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA or its successor agency under Public Law 103-354 1955-

40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by the agency as full liquidated damages.

(f) *Commission—(1) Amount—(i) Exclusive broker contract.* FmHA or its successor agency under Public Law 103-354 may not set the commission rate in an exclusive broker solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any broker who submits an offer with a commission rate lower than the typical rate for such services in the area must provide documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy.

(ii) *Open listing agreement.* A uniform fee or commission schedule, by property type, will be established by the servicing official within a given sales area. The commission rate to be paid will be the typical rate for such services in the sales area and will not exceed or be lower than commissions paid for similar types of services provided by the broker to other sellers of similar property.

(2) *Special effort sales bonuses.* The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property. The State Director may authorize use of short-term (not to exceed three months) special effort sales bonuses on a group, county, district or state-wide basis, if it appears necessary to facilitate the sale of nonprogram property.

(3) *Payment of commission.* Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's salesperson(s),

to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving FmHA or its successor agency under Public Law 103-354 credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving FmHA or its successor agency under Public Law 103-354 credit, one-half the respective commission will be paid to the exclusive broker. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA or its successor agency under Public Law 103-354 official by completing Form AD-838 and processing Form FmHA or its successor agency under Public Law 103-354 838-B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA or its successor agency under Public Law 103-354 shall certify to nondiscrimination practices as provided in Form FmHA or its successor agency under Public Law 103-354 1955-42. In addition, all brokers participating in the sale of property shall sign the nondiscrimination certification on Form FmHA or its successor agency under Public Law 103-354 1955-45.

[53 FR 27836, July 25, 1988, as amended at 55 FR 3943, Feb. 6, 1990; 62 FR 44401, Aug. 21, 1997; 68 FR 61332, Oct. 28, 2003]

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in §1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

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(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* FmHA or its successor agency under Public Law 103-354 may not set the commission rate in an auctioneer solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any offeror that submits an offer with a commission rate lower than the typical rate for such services in the area must include documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA or its successor agency under Public Law 103-354 official completing Form AD-838 and processing Form FmHA or its successor agency under Public Law 103-354 838-B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

GENERAL

§ 1955.132 Pilot projects.

FmHA or its successor agency under Public Law 103-354 may conduct pilot projects to test policies and procedures for the management and disposition of inventory property which deviate from the provisions of this subpart, but are not inconsistent with the provisions of the authorizing statute or other applicable Acts. A pilot project may be con-

ducted by FmHA or its successor agency under Public Law 103-354 employees or by contract with individuals, organizations or other entities. Prior to initiation of a pilot project, FmHA or its successor agency under Public Law 103-354 will publish notice in the FEDERAL REGISTER of its nature, scope, and duration.

[55 FR 3943, Feb. 6, 1990]

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if FmHA or its successor agency under Public Law 103-354 extends credit and the property then becomes subject to Title VI, the buyer will sign Form FmHA or its successor agency under Public Law 103-354 400-4. "Assurance Agreement." The instrument of conveyance will contain the following statement:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed or offered for sale at the same time will prepare and submit to FmHA or its successor agency under Public Law 103-354 an acceptable Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for each such subdivision in accordance with §1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) *Equal Housing Opportunity logo.* All FmHA or its successor agency under Public Law 103-354 and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the FmHA

or its successor agency under Public Law 103-354 and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by FmHA or its successor agency under Public Law 103-354, FmHA or its successor agency under Public Law 103-354 will reappraise the property. The reappraised value of the property will serve as the amount FmHA or its successor agency under Public Law 103-354 will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by FmHA or its successor agency under Public Law 103-354 is less than \$500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

(b) *Existing defects.* FmHA or its successor agency under Public Law 103-354 does not provide any warranty on property sold from inventory. Subsequent loans may be made, in accordance with applicable loan making regulations for the respective loan program, to correct defects.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

§ 1955.135 Taxes on inventory real property.

Where FmHA or its successor agency under Public Law 103-354 owned property is subject to taxation, taxes and assessment installments will be prorated between FmHA or its successor agency under Public Law 103-354 and the purchaser as of the date the title is conveyed in accordance with the conditions of Forms FmHA or its successor agency under Public Law 103-354 1955-45 or FmHA or its successor agency under Public Law 103-354 1955-46. The purchaser will be responsible for paying all taxes and assessment installments accruing after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold.

Only the prorata share of assessment installments for property improvements (water, sewer, curb and gutter, etc.) accrued as of the date property is sold will be paid by FmHA or its successor agency under Public Law 103-354 for inventory property. At the closing, payment of taxes and assessment installments due to be paid by FmHA or its successor agency under Public Law 103-354 will be paid from cash proceeds FmHA or its successor agency under Public Law 103-354 is to receive as a result of the sale or by voucher and will be accomplished by one of the following:

(a) For purchasers receiving FmHA or its successor agency under Public Law 103-354 credit and required to escrow, FmHA or its successor agency under Public Law 103-354's share of accrued taxes and assessment installments will be deposited in the purchaser's escrow account.

(b) For purchasers not required to escrow, accrued taxes and assessment installments may be:

(i) Paid to the local taxing authority if they will accept payment at that time; or

(ii) Paid to the purchaser. If appropriate, for program purchasers, the funds can be deposited in a supervised bank account until the taxes can be paid.

(c) Except for SFH, deducted from the sale price (which may result in a promissory note less than the sale price), if acceptable to the purchaser.

[56 FR 6953, Feb. 21, 1991]

§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an environmental impact statement. Detailed guidance on when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for those proposed conveyances that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The FmHA or its successor agency under Public Law 103-354 approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500-3, "Land Use Policy," in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland or Coastal Barrier Resources System (CBRS)*—(1) *Use restrictions.* Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property containing floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law. Applicable restrictions will be incorporated into quitclaim deeds in a format similar to that contained in Exhibits H and I of RD Instruction 1955-C (available in any Agency office). A listing of all restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified spe-

cial flood or mudslide hazard area as defined in, subpart B of part 1806 of this chapter will not be sold for residential purposes unless determined by the county official or district director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants).

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and nonprogram (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in, paragraph 3b (1) and (2) of Exhibit C of subpart G of part 1940.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, no credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan or any other type of Federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purpose of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA.

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (a)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and

Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (a)(3)(ii) of this section must be forwarded to the Administrator for review. Approval will not be granted unless the Administrator determines, through consultation with the Department of Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) *Wetlands located on FSA inventory property.* Perpetual wetland conservation easements (encumbrances in deeds) to protect and restore wetlands or converted wetlands that exist on suitable or surplus inventory property will be established prior to sale of such property. The provisions of paragraphs (a) (2) and (3) of this section also apply, as does paragraph (a)(1) of this section insofar as floodplains are concerned. This requirement applies to either cash or credit sales. Similar restrictions will be included in leases of inventory properties to beginning farmers or ranchers. Wetland conservation easements will be established as follows:

(1) All wetlands or converted wetlands located on FSA inventory property which were not considered cropland on the date the property was acquired and were not used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will receive a wetland conservation easement.

(2) All wetlands or converted wetlands located on FSA inventory property that were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will not receive a wetland conservation easement.

(3) The following steps should be taken in determining if conservation easements are necessary for the protection of wetlands or converted wetland on inventory property:

(i) NRCS will be contacted first to identify the wetlands or converted wetlands and wetland boundaries of each

wetland or converted wetland on inventory property.

(ii) After receiving the wetland determination from NRCS, FSA will review the determination for each inventory property and determine if any of the wetlands or converted wetlands identified by NRCS were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired. Property will be considered to have been used for farming if it was primarily used for agricultural purposes including but not limited to such uses as cropland, pasture, hayland, orchards, vineyards and tree farming.

(iii) After FSA has completed the determination of whether the wetlands or converted wetlands located on an inventory property were used for cropland or farming, the U.S. Fish and Wildlife Service (FWS) will be contacted. Based on the technical considerations of the potential functions and values of the wetlands on the property, FWS will identify those wetlands or converted wetlands that require protection with a wetland conservation easement along with the boundaries of the required wetland conservation easement. FWS may also make other recommendations if needed for the protection of important resources such as threatened or endangered species during this review.

(4) The wetland conservation easement will provide for access to other portions of the property as necessary for farming and other uses.

(5) The appraisal of the property must be updated to reflect the value of the land due to the conservation easement on the property.

(6) Easement areas shall be described in accordance with State or local laws. If State or local law does not require a survey, the easement area can be described by rectangular survey, plat map, or other recordable methods.

(7) In most cases the FWS shall be responsible for easement management and administration responsibilities for such areas unless the wetland easement area is an inholding in Federal or State property and that entity agrees

to assume such responsibility, or a State fish and wildlife agency having counterpart responsibilities to the FWS is willing to assume easement management and administration responsibilities. The costs associated with such easement management responsibilities shall be the responsibility of the agency that assumes easement management and administration.

(8) County officials are encouraged to begin the easement process before the property is taken into inventory, if possible, in order to have the program completed before the statutory time requirement for sale.

(c) *Historic preservation.* (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the Agency official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See subpart F of part 1901 of this chapter for additional guidance.) The State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria are met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historical or archaeological importance; has apparent significant architectural features; or is similar to other Agency properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) If the result of the consultations with the SHPO is that a property may be eligible or that it is questionable, an official determination must be obtained from the Secretary of the Interior.

(3) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the Agency official responsible for the conveyance must consult with the SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to pub-

lic or private interest. The Advisory Council on Historic Preservation must be consulted by the State Director or State Executive Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(4) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to a potential bidder or purchaser through a notice procedure similar to that in §1955.13(a)(2) of this subpart.

(d) *Highly erodible farmland.* (1) The FSA county official will determine if any inventory property contains highly erodible land as defined by the NRCS and, if so, what specific conservation practices will be made a condition of a sale of the property.

(2) If the county official does not concur in the need for a conservation practice recommended by NRCS, any differences shall be discussed with the recommending NRCS office. Failure to reach an agreement at that level shall require the State Executive Director to make a final decision after consultation with the NRCS State Conservationist.

(3) Whenever NRCS technical assistance is requested in implementing these requirements and NRCS responds that it cannot provide such assistance within a time frame compatible with the proposed sale, the sale arrangements will go forward. The sale will proceed, conditioned on the requirement that a purchaser will immediately contact (NRCS) have a conservation plan developed and comply with this plan. The county official will monitor the borrower's compliance with the recommendations in the conservation plan. If problems occur in obtaining NRCS assistance, the State Executive Director should consult with the NRCS State Conservationist.

(e) *Notification to purchasers of inventory property with reportable underground storage tanks.* If the Agency is selling inventory property containing a storage tank which was reported to the Environmental Protection Agency (EPA) pursuant to the provisions of §1955.57 of subpart B of this part, the potential purchaser will be informed of the reporting requirement and provided

a copy of the report filed by the Agency.

(f) *Real property that is unsafe.* If the Agency has in inventory, real property, exclusive of any improvements, that is unsafe, that is it does not meet the definition of "safe" as contained in §1955.103 of this subpart and which cannot be feasibly made safe, the State Director or State Executive Director will submit the case file, together with documentation of the hazard and a recommended course of action to the National Office, ATTN: appropriate Deputy Administrator, for review and guidance.

(g) *Real property containing hazardous waste contamination.* All inventory property must be inspected for hazardous waste contamination either through the use of a preliminary hazardous waste site survey or Transaction Screen Questionnaire. If possible contamination is noted, a Phase I or II environmental assessment will be completed per the advice of the State Environmental Coordinator.

[62 FR 44401, Aug. 21, 1997, as amended at 68 FR 7700, Feb. 18, 2003]

§ 1955.138 Property subject to redemption rights.

If, under State law, FmHA or its successor agency under Public Law 103-354's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) A credit sale of a program or suitable property subject to redemption rights may be made to a program applicant when the property meets the standards for the respective loan program. In areas where State law does not provide for full recovery of the cost of repairs during the redemption period, a program sale is generally precluded unless the property already meets program standards.

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recov-

erable under the State's provisions of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

§ 1955.139 Disposition of real property rights and title to real property.

(a) *Easements, rights-of-way, development rights, restrictions or the equivalent thereof.* The State Director is authorized to convey these rights for conservation purposes, roads, utilities, and other purposes as follows:

(1) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

(2) Except as provided in paragraph (a)(3) of this section easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not change the classification from program/suitable to NP or surplus, nor decrease the value by more than the price received.

(3) For FSA properties only, easements, restrictions, development rights or similar legal rights may be granted or sold separately from the underlying

fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a State, a political subdivision of a State, or a private nonprofit organization. Easements may be granted or sold to a Federal agency for conservation purposes as long as the requirements of §1955.139(c)(2) of this subpart are followed. If FSA has an affirmative responsibility such as protecting an endangered species as provided for in paragraph (a)(3(v) of this section, the requirements in §1955.139(c) of this subpart do not apply.

(i) Conservation purposes include but are not limited to protecting or conserving the following environmental resources or land uses:

(A) Fish and wildlife habitats of local, regional, State, or Federal importance,

(B) Floodplain and wetland areas as defined in Executive Orders 11988 and 11990,

(C) Highly erodible land as defined by SCS,

(D) Important farmland, prime forest land, or prime rangeland as defined in Departmental Regulation 9500-3, Land Use Policy,

(E) Aquifer recharge areas of local, regional or State importance,

(F) Areas of high water quality or scenic value, and

(G) Historic and cultural properties.

(ii) Development rights may be sold for conservation purposes for their market value directly to a unit of local or State governmental or a private nonprofit organization by negotiation.

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local, State, Federal government or a private nonprofit organization for conservation purposes. If such a conveyance will adversely affect the FmHA or its successor agency under Public Law 103-354 financial interest, the State Director will submit the proposal to the Administrator for approval unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors

to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not change program/suitable property to NP or surplus. Conveyances shall include terms and conditions which clearly specify the property interest(s) being conveyed as well as all appropriate restrictions and allowable uses. The conveyances shall also require the owner of such interest to permit the FmHA or its successor agency under Public Law 103-354, and any person or government entity designated by the FmHA or its successor agency under Public Law 103-354, to have access to the affected property for the purpose of monitoring compliance with terms and conditions of the conveyance. To the maximum extent possible, the conveyance should designate an organization or government entity for monitoring purposes. In developing the conveyance, the approval official shall consult with any State or Federal agency having special expertise regarding the environmental resource(s) or land uses to be protected.

(v) For FP cases except when FmHA or its successor agency under Public Law 103-354 has an affirmative responsibility to place a conservation easement upon a farm property, easements under the authority of this paragraph will not be established unless either the rights of all prior owner(s) have been met or the prior owner(s) consents to the easement. Examples of instances where an affirmative responsibility exists to place an easement on a farm property include wetland and floodplain conservation easements required

by §1955.137 of this subpart or easements designed as environmental mitigation measures and required in the implementation of Subpart G of Part 1940 of this chapter for the purpose of protecting federally designated important environmental resources. These resources include: Listed or proposed endangered or threatened species, listed or proposed critical habitats, designated or proposed wilderness areas, designated or proposed wild or scenic rivers, historic or archaeological sites listed or eligible for listing on the National Register of Historic Places, coastal barriers included in Coastal Barrier Resource Systems, natural landmarks listed on national Registry of Natural Landmarks, and sole source aquifer recharge as designated by the Environmental Protection Agency.

(vi) For FP cases whenever a request is made for an easement under the authority of this paragraph and such request overlaps an area upon which FmHA or its successor agency under Public Law 103-354 has an affirmative responsibility to place an easement, that required portion of the easement, either in terms of geographical extent or content, will not be considered to adversely impact the value of the farm property.

(4) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) *Mineral and water rights, mineral lease interests, air rights, and agricultural or other leases.* (1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests will be sold with the surface land and will not be sold separately, except as provided in paragraph (a) of this section and in §1955.66(a)(2)(iii) of Subpart B of Part 1955 of this chapter. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessee or payor of the assignment. A copy of this

notice will be furnished to the purchaser.

(3) The value of such rights, interests or leases will be considered when the property is appraised.

(c) *Transfer of FSA inventory property for conservation purposes.* (1) In accordance with the provisions of this paragraph, FSA may transfer, to a Federal or State agency for conservation purposes (as defined in paragraph (a)(3)(i) of this section), inventory property, or an interest therein, meeting any one of the following three criteria and subject only to the homestead protection rights of all previous owners having been met.

(i) A predominance of the land being transferred has marginal value for agricultural production. This is land that NRCS has determined to be either highly erodible or generally not used for cultivation, such as soils in classes IV, V, VII or VIII of NRCS's Land Capability Classification, or

(ii) A predominance of land is environmentally sensitive. This is land that meets any of the following criteria:

(A) Wetlands, as defined in Executive Order 11990 and USDA Regulation 9500.

(B) Riparian zones and floodplains as they pertain to Executive Order 11988.

(C) Coastal barriers and zones as they pertain to the Coastal Barrier Resources Act or Coastal Zone Management Act.

(D) Areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat for recovery pertaining to the Endangered Species Act.

(E) Fish and wildlife habitats of local, regional, State or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility (*e.g.*, Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharges areas of local, regional, State or Federal importance.

(G) Areas of high water quality or scenic value.

(H) Areas containing historic or cultural property; or

(iii) A predominance of land with special management importance. This is land that meets the following criteria:

(A) Lands that are in holdings, lie adjacent to, or occur in proximity to, Federally or State-owned lands or interest in lands.

(B) Lands that would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

(C) Lands that would provide a necessary buffer to development if such development would adversely affect the existing Federally or State-owned lands.

(D) Lands that would contribute to boundary identification and control of existing conservation lands.

(2) When a State or Federal agency requests title to inventory property, the State Executive Director will make a preliminary determination as to whether the property can be transferred.

(3) If a decision is made by the State Executive Director to deny a transfer request by a Federal or State agency, the requesting agency will be informed of the decision in writing and informed that they may request a review of the decision by the FSA Administrator.

(4) When a State or Federal agency requests title to inventory property and the State Executive Director determines that the property is suited for transfer, the following actions must be taken prior to approval of the transfer:

(i) At least two public notices must be provided. These notices will be published in a newspaper with a wide circulation in the area in which the requested property is located. The notice will provide information on the proposed use of the property by the requesting agency and request any comments concerning the negative or positive aspects of the request. A 30-day comment period should be established for the receipt of comments.

(ii) If requested, at least one public meeting must be held to discuss the request. A representative of the requesting agency should be present at the meeting in order to answer questions concerning the proposed conservation use of the property. The date and time for a public meeting should be advertised.

(iii) Written notice must be provided to the Governor of the State in which

the property is located as well as at least one elected official of the county in which the property is located. The notification should provide information on the request and solicit any comments regarding the proposed transfer. All procedural requirements in paragraph (c) (3) of this section must be completed in 75 days.

(5) Determining priorities for transfer or inventory lands.

(i) A Federal entity will be selected over a State entity.

(ii) If two Federal agencies request the same land tract, priority will be given to the Federal agency that owns or controls property adjacent to the property in question or if this is not the case, to the Federal agency whose mission or expertise best matches the conservation purposes for which the transfer would be established.

(iii) In selecting between State agencies, priority will be given to the State agency that owns or controls property adjacent to the property in question or if that is not the case, to the State agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(6) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (*e.g.*, Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to a habitat of National importance (*e.g.*, wetlands as addressed in the Emergency Wetlands Resources Act), priority consideration will be given to land transfer for conservation purposes, without reimbursement, over other land disposal alternatives.

(7) An individual property may be subdivided into parcels and a parcel can be transferred under the requirements of this paragraph as long as the remaining parcels to be sold make up a viable sales unit, suitable or surplus.

[50 FR 23904, June 7, 1985, as amended at 51 FR 13479, Apr. 21, 1986; 53 FR 27838, July 25, 1988; 53 FR 35781, Sept. 14, 1988; 57 FR 36592, Aug. 14, 1992; 62 FR 44403, Aug. 21, 1997; 68 FR 61332, Oct. 28, 2003]

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property, other than Farm Credit Programs property, may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the county official will subdivide the property into one or more tracts to be sold in accordance with §1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental effects should also be considered pursuant to subpart G of part 1940 of this chapter. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. Subdivision of acquired property will be reported on Form RD 1955-3C, "Acquired Property—Subdivision," in accordance with the FMI.

(b) *Grouping of individual properties.* The county official for FCP cases, and the State Director for all other cases, may authorize the combining of two or more individual properties into a single parcel for sale as a suitable program property.

[62 FR 44403, Aug. 21, 1997]

§ 1955.141 Transferring title.

(a)–(c) [Reserved]

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. 7 CFR part 3560, subpart E will be followed in processing the request for a rent increase. In processing the rent increase, the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to program applicants purchasing MFH properties in accordance with the provisions of 7 CFR part 3560, subpart F.

[53 FR 27838, July 25, 1988, as amended at 56 FR 2257, Jan. 22, 1991; 57 FR 36592, Aug. 14, 1992; 60 FR 34455, July 3, 1995; 69 FR 69106, Nov. 26, 2004]

§§ 1955.142–1955.143 [Reserved]**§ 1955.144 Disposal of NP or surplus property to, through, or acquisition from other agencies.**

(a) *Property which cannot be sold.* If NP or surplus real or chattel property cannot be sold (or only token offers are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, "Report of Excess Personal Property," with transfer documented by Standard Form 122, "Transfer Order Excess Personal Property." Real property will be reported to GSA using Standard Form 118, "Report of Excess Real Property," Standard Form 118A, "Buildings, Structures, Utilities and Miscellaneous Facilities (Schedule A)," Standard Form 118B, "Land (Schedule B)" and Standard Form 118C, "Related Personal Property (Schedule B)," with final disposition documented by a "Receiving Report," executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions will be obtained from the appropriate GSA Regional Office by the State Office.

(b) *Urban Homesteading Program (UH).* Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired FmHA or its successor agency under Public Law 103-354 single family residential properties sold through the HUD-UH Program. Local governmental units may make

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application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator for Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the "Memorandum of Agreement between the Farmers Home Administration or its successor agency under Public Law 103-354 and the Secretary of Housing and Urban Development" dated October 2, 1981. (See Exhibit C of this subpart.) A Local Urban Homesteading Agency (LUHA) is authorized a 10 percent discount of the listed price on any SFH nonprogram property for the UH Program. No discount is authorized on program property.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27839, July 25, 1988; 55 FR 3943, Feb. 6, 1990]

EDITORIAL NOTE: At 60 FR 34455, July 3, 1995, §1955.144 was amended by removing the second through the fourth sentences. However, there are no undesignated paragraphs in the 1995 edition of this volume.

§ 1955.145 Land acquisition to effect sale.

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be NP due to location and where it is economically feasible to relocate the structure thereby making it a program property, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining NP parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined NP for reasons that may be cured by the acquisi-

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tion of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make NP property a program property, if economically feasible.

[53 FR 27839, July 25, 1988]

§ 1955.146 Advertising.

(a) *General.* When property is being sold by FmHA or its successor agency under Public Law 103-354 or through real estate brokers, it is the servicing official's responsibility to ensure adequate advertising of property to achieve a timely sale. The primary means of advertisements are newspaper advertisements in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-F (available in any FmHA or its successor agency under Public Law 103-354 office), public notice using Form FmHA or its successor agency under Public Law 103-354 1955-41, "Notice of Sale," and notification of known interested parties. Other innovative means are encouraged, such as the use of a bulletin board to display photographs of inventory properties for sale with a brief synopsis of the property attached; posting Forms FmHA or its successor agency under Public Law 103-354 1955-40 or FmHA or its successor agency under Public Law 103-354 1955-43, as appropriate, in the reception area to attract applicant and broker interest; posting notices of sale at employment centers; door-to-door distribution of sales notices at apartment complexes; radio and/or television spots; group meetings with potential applicants/investors/real estate brokers; and advertisements in magazines and other periodicals. If FmHA or its successor agency under Public Law 103-354 personnel are not available to perform these services, FmHA or its successor agency under Public Law 103-354 may contract for such services in accordance with

FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(b) *Large-value and complex properties.* Advertising for MFH, B&I and other large-value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) *MFH restrictive-use provisions.* Advertisements for multi-family housing projects will advise prospective purchasers of any restrictive-use requirements that will be attached to the project and added to the title of the property.

(d) *Racial and socio-economic considerations.* In accordance with the policies set forth in §1901.203(c) of subpart E of part 1901 of this chapter, the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of existing racial or socio-economic patterns are reached.

(e) *Rejected application for SFH loan.* If an application for a SFH loan is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27839, July 25, 1988; 58 FR 38928, July 21, 1993]

§ 1955.147 Sealed bid sales.

This section provides guidance on the sale of all FmHA or its successor agency under Public Law 103-354 inventory property, except suitable FP real property which will not be sold by sealed bid. Before a sealed bid sale, the State Director will determine and document

the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP or surplus property, credit may be extended to facilitate the sale. When a group of properties is to be sold at one time, advertising may indicate that FmHA or its successor agency under Public Law 103-354 will consider bids on an individual property or a group of properties and FmHA or its successor agency under Public Law 103-354 will accept the bid or bids which are in the best financial interest of the Government. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA or its successor agency under Public Law 103-354 1955-46 with any accompanying deposit in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA or its successor agency under Public Law 103-354. For program and suitable property, the minimum deposit will be the same as outlined in §1955.130(e)(1) of this subpart. For NP or surplus property, the minimum deposit will be ten percent (10%). The bid will be considered delivered when actually received at the FmHA or its successor agency under Public Law 103-354 office. All bids will be date and time stamped. Advertisements and notices will request bidders to submit their bid in a sealed envelope marked as follows:

SEALED BID OFFER _____ * _____."
(*Insert "PROPERTY IDENTIFICATION NUMBER _____").

(a) *Opening bids.* Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the FmHA or its successor agency under Public Law 103-354 office. The County Supervisor, District Director, or State Director or his/her designee will open the bids with at least one other FmHA or its successor agency under Public

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Law 103-354 employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of the deposit, and any conditions of the bid. The tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and retained in the inventory file.

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. For SFH and FP (surplus property) sales, preference will be given to a cash offer on NP or surplus property sales which is at least ____*____ percent of the highest offer requiring credit [*Refer to Exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the current percentage.] Otherwise, equal bids will be accepted by public lot drawing. For program or suitable property sales, no preference will be given to program purchasers unless two identical high bids are received, in which case the bid from the program purchaser will receive preference. If a bid is received from any purchaser with a request for credit that (considering any deposit) exceeds the market value of the property or requests a term which exceeds the period for which the property will serve as adequate security, the bidder will be given the opportunity to reduce the credit request and/or term with *no* accompanying change in the offered price.

(c) *Unsuccessful bids.* Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

(d) *Disqualified bids.* Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the FmHA or its suc-

cessor agency under Public Law 103-354 official approving the sale.

(e) *Failure to close.* If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages. However, if a credit sale complying with the FmHA or its successor agency under Public Law 103-354 notice is an element of the offer and FmHA or its successor agency under Public Law 103-354 disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director may authorize either another sealed bid or auction sale of direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) *No acceptable bid.* Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.108(d) of this subpart.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27839, July 25, 1988; 54 FR 6875, Feb. 15, 1989; 55 FR 3943, Feb. 6, 1990; 68 FR 61332, Oct. 28, 2003]

§ 1955.148 Auction sales.

This section provides guidance on the sale of all inventory property by auction, except FSA real property. Before an auction, the State Director, with the advice of the National Office for organizational property, will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and property. For NP property, credit may be offered to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. For program property sales, no preference will be given to program purchasers. The State Director will also consider whether an Agency employee will conduct an auction or whether the services of a professional

auctioneer are necessary due to the complexity of the sale. When the services of a professional auctioneer are advisable, the services will be procured by contract in accordance with RD Instruction 2024-A (available in any Agency Office). Chattel property may be sold at public auction that is widely advertised and held on a regularly scheduled basis without solicitation. Form RD 1955-46 will be used for auction sales. At the auction, successful bidders will be required to make a bid deposit. For program and suitable property, the bid deposit will be the same as outlined in §1955.130(e)(1) of this subpart. For NP property sales, a bid deposit of 10 percent is required. Deposits will be in the form of cashier's check, certified check, postal or bank money order or bank draft payable to the Agency, cash or personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. Where credit sales are authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept a bid which requests credit in excess of the market value. When the highest bid is lower than the minimum amount acceptable to the Agency, negotiations should be conducted with the highest bidder or in turn, the next highest bidder or other persons to obtain an executed bid at the predetermined minimum.

[62 FR 44404, Aug. 21, 1997, as amended at 68 FR 61332, Oct. 28, 2003]

§1955.149 Exception authority.

(a) The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon re-

quest of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) The Administrator may authorize withholding sale of surplus farm inventory property temporarily upon making a determination that sales would likely depress real estate market and preclude obtaining at that time the best price for such land.

§1955.150 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this Instruction to provide guidance to FmHA or its successor agency under Public Law 103-354 officials. State Supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

EXHIBIT A TO SUBPART C OF PART 1955—
NOTICE OF FLOOD, MUDSLIDE HAZARD OR WETLAND AREA

TO: _____

DATE: _____

This is to notify you that the real property located at _____ is in a floodplain, wetland or area identified by the Federal Insurance Administration of the Federal Emergency Management Agency as having special flood or mudslide hazards. This identification means that the area has at least one percent chance of being flooded or affected by mudslide in any given year. For floodplains and wetlands on the property, restrictions are being imposed. Specific designation(s) of this property is(are) (special flood) (mudslide hazard) (wetland)*. The following restriction(s) on the use of the property will be included in the conveyance and shall apply to the purchasers, purchaser's heirs, assigns and successors and shall be construed as both a covenant running with

the property and as equitable servitude subject to release by the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) when/if no longer applicable:

(INSERT RESTRICTIONS)

The FmHA or its successor agency under Public Law 103-354 will increase the number of acres placed under easement, if requested in writing, provided that the request is supported by a technical recommendation of the U.S. Fish and Wildlife Service. Where additional acreage is accepted by FmHA or its successor agency under Public Law 103-354 for conservation easement, the purchase price of the inventory farm will be adjusted accordingly.

(County Supervisor, District Director or Real Estate Broker)

ACKNOWLEDGEMENT _____

DATE: _____

I hereby acknowledge receipt of the notice that the above stated real property is in a (special flood) (mudslide hazard) (wetland)* area and is subject to use restrictions as above cited. [Also, if I purchase the property through a credit sale, I agree to insure the property against loss from (floods) (mudslide)* in accordance with requirements of the FmHA or its successor agency under Public Law 103-354.]

(Prospective Purchaser)

* Delete the hazard that does not apply.

[57 FR 31644, July 17, 1992]

PART 1956—DEBT SETTLEMENT

Subpart A [Reserved]

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

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1956.144 [Reserved]

1956.145 Disposition of essential FmHA or its successor agency under Public Law 103-354 records.

1956.146 [Reserved]

1956.147 Debt settlement under the Federal Claims Collection Act.

1956.148 Exception authority.

1956.149 [Reserved]

1956.150 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

SOURCE: 51 FR 45434, Dec. 18, 1986, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

SOURCE: 56 FR 10147, Mar. 11, 1991, unless otherwise noted.

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policy and procedures for