

them. In some jurisdictions, a mechanic's lien also exists for the value of professional services.

(m) *Modular/panelized housing.* Housing, constructed of one or more factory-built sections, which, when completed, meets or exceeds the requirements of one or more of the recognized development standards for site-built housing, and which is designed to be permanently connected to a site-built foundation.

(n) *Project representative.* The architect's or owner's representative at the construction site who assists in the administration of the construction contract. When required by FmHA or its successor agency under Public Law 103-354, a full-time project representative shall be employed.

(o) *Technical services.* Applicants are responsible for obtaining the services necessary to plan projects including analysis of project design requirements, creation and development of the project design, preparation of drawings, specifications and bidding requirements, and general administration of the construction contract.

(1) Architectural services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with state law to perform architectural services.

(2) Engineering services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with State law to perform engineering services.

(p) *Warranty.* A legally enforceable assurance provided by the builder (warrantor) to the owner and the FmHA or its successor agency under Public Law 103-354 indicating that the work done and materials supplied conform to those specified in the contract documents and applicable regulations. For the period of the warranty, the warrantor agrees to repair defective workmanship and repair or replace any defective materials at the expense of the warrantor.

[52 FR 8002, Mar. 13, 1987, as amended at 59 FR 6882, Feb. 14, 1994]

§ 1924.5 Planning development work.

(a) *Extent of development.* For an FO loan, the plans for development will include the items necessary to put the

farm in a livable and operable condition consistent with the planned farm and home operations. For other types of loans, the plans will include those items essential to achieve the objectives of the loan or grant as specified in the applicable regulation.

(b) *Funds for development work.* The total cash cost of all planned development will be shown on Form FmHA or its successor agency under Public Law 103-354 1924-1, "Development Plan," except Form FmHA or its successor agency under Public Law 103-354 1924-1 may be omitted when: (1) All development is to be done by the contract method, (2) adequate cost estimates are included in the docket, and (3) the work, including all landscaping, repairs, and site development work, is completely described on the drawings, in the specifications, or in the contract documents. Sufficient funds to pay for the total cash cost of all planned development must be provided at or before loan closing. Funds to be provided may include loan proceeds, any cash to be furnished by the borrower, proceeds from cost sharing programs such as Agricultural Stabilization and Conservation Service (ASCS) and Great Plains programs or proceeds from the sale of property in accordance with paragraph (g) of this section.

(c) *Scheduling of development work.* (1) All construction work included in the development plan for RH loans will be scheduled for completion as quickly as practicable and no later than 9 months from the date of loan closing, except for mutual self-help housing where work may be scheduled for completion within a period of 15 months.

(2) Development for farm program loans will be scheduled for completion as quickly as practicable and no later than 15 months from the date of loan closing unless more time is needed to establish land development practices in the area.

(d) *Construction.* (1) All new buildings to be constructed and all alterations and repairs to buildings will be planned to conform with good construction practices. The FmHA or its successor agency under Public Law 103-354 Manual of Acceptable Practices (MAP) Vol. 4930.1 (available in any FmHA or its successor agency under Public Law 103-

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354 office), provides suggestions and illustrative clarifications of design and construction methods which are generally satisfactory in most areas. All improvements to the property will conform to applicable laws, ordinances, codes, and regulations related to the safety and sanitation of buildings; standards referenced in Appendices C through F of HUD Handbook 4910.1, Minimum Property Standards for Housing; Thermal Performance Construction Standards contained in exhibit D of this subpart and, when required, to certain other development standards described below.

(i) The development standard applicable to a proposal will be selected by the loan applicant or recipient of an RH Conditional Commitment in accordance with the following. The standard selected must:

(A) Relate to the type(s) of building proposed.

(B) Meet or exceed any applicable local or state laws, ordinances, codes and regulations.

(C) Include all referenced codes and standards.

(D) Exclude inapplicable administrative requirements.

(E) Be the current edition(s) of either paragraph (d)(1)(i)(E)(1) or (2) of this section:

(1) The development standard, consisting of building, plumbing, mechanical and electrical codes, adopted by FmHA or its successor agency under Public Law 103-354 for use in the state (identified in a State Supplement to this section) in which the development is proposed, in accordance with the following:

(i) The adopted development standard shall include any building, plumbing, mechanical or electrical code adopted by the State, if determined by the State Director to be based on one of the model codes listed in exhibit E to this subpart, or, if not available,

(ii) The adopted development standard shall include any building, plumbing, mechanical or electrical code adopted by the state, if determined by the Administrator to be acceptable, or, if not available,

(iii) The adopted development standard shall include the model building, plumbing, mechanical or electrical

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code listed in exhibit E to this subpart that is determined by the State Director to be most prevalent and appropriate for the state.

(2) Any of the model building, plumbing, mechanical and electrical codes listed in exhibit E to this subpart or the standards defined in §1924.4(h)(3) of this subpart.

(ii) Guide 2, "FmHA or its successor agency under Public Law 103-354 Design Guide," of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), includes guidelines for the evaluation of the design features which are not fully addressed in the development standards.

(iii) In new housing, all design, materials and construction will meet or exceed the applicable development standard as provided in paragraph (d)(1)(i) of this section.

(iv) For multi-family residential rehabilitation, as defined in exhibit K of this subpart, all substantial rehabilitation work on existing buildings will meet or exceed the applicable development standard. All moderate rehabilitation work should comply with Guide 3, "Quality and Performance Criteria for Moderate Rehabilitation," of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office).

(v) The design and construction of housing repairs made with FmHA or its successor agency under Public Law 103-354 loan or grant funds will, as near as possible, comply with the applicable development standard.

(vi) Farm LH design and construction will comply with the following:

(A) Family projects, where the length of occupancy will be:

(1) Year-round, will meet or exceed the applicable development standard.

(2) Less than 12 months, but more than 6 months, will be in substantial conformance with the applicable development standard and constructed to facilitate conversion to year-round occupancy standards.

(3) Six months or less, may be less than the applicable development standard but should be constructed in accordance with exhibit I of this subpart.

(B) Dormitory and other nonfamily type projects, where the length of occupancy will be:

(1) More than 6 months, will be in substantial conformance with the applicable development standard and will at least meet or exceed the requirements of the Department of Labor, Bureau of Employment Security (29 CFR 1910.140).

(2) Six months or less, will comply with §1924.5(d)(1)(vi)(A)(3).

(vii) Farm service buildings should be designed and constructed for adaptation to the local area. In designing and locating farm service buildings, consideration will be given to practices recommended by agriculture colleges, the Extension Service (ES), Soil Conservation Service (SCS) and other reliable sources.

(2) Drawings, specifications, and estimates will fully describe the work. Technical data, tests, or engineering evaluations may be required to support the design of the development. The "Guide for Drawings and Specifications," exhibit C of this subpart, describes the drawings and specifications that are to be included in the application for building construction, and subpart C of part 1924 of this chapter describes the drawings that should be included for development of building sites. The specific development standard being used, if required under paragraph (d)(1) of this section will be identified on all drawings and specifications.

(3) Materials acceptance shall be the same as described in paragraph X of exhibit B to this subpart.

(4) Except as provided in paragraphs (d)(4)(i) through (iii) of this section, new building construction and additions shall be designed and constructed in accordance with the earthquake (seismic) requirements of the applicable Agency's development standard (building code). The analysis and design of structural systems and components shall be in accordance with applicable requirements of an acceptable model building code.

(i) Agricultural buildings that are not intended for human habitation are exempt from these earthquake (seismic) requirements.

(ii) Single family conventional light wood frame dwellings of two stories or 35 feet in height maximum shall be designed and constructed in accordance with the 1992 Council of American Building Officials (CABO) One and Two Family Dwelling Code or the latest edition.

(iii) Single family housing of masonry design and townhouses of wood frame construction and additions financed (either directly or through a guarantee) under title V of the Housing Act of 1949 are recommended to be designed and constructed in accordance with the earthquake (seismic) requirements of one of the building codes that provides an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions).

(iv) Acknowledgment of compliance with the applicable seismic safety requirements for new construction will be contained in the certification of final plans and specification on the appropriate Agency Form.

(e) *Land development.* (1) In planning land development, consideration will be given to practices, including energy conservation measures, recommended by agricultural colleges, ES, SCS or other reliable sources. All land and water development will conform to applicable laws, ordinances, zoning and other applicable regulations including those related to soil and water conservation and pollution abatement. The County Supervisor or District Director also will encourage the applicant to use any cost-sharing and planning assistance that may be available through agricultural conservation programs.

(2) Site and subdivision planning and development must meet the requirements of subpart C of part 1924 of this chapter.

(3) Plans and descriptive material will fully describe the work.

(4) The site planning design, development, installation and set-up of manufactured home sites, rental projects and subdivisions shall meet the requirements of exhibit J of this subpart

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and subpart C of part 1924 of this chapter.

(i) Plans for land leveling, irrigation, or drainage should include a map of the area to be improved showing the existing conditions with respect to soil, topography, elevations, depth of topsoil, kind of subsoil, and natural drainage, together with the proposed land development.

(ii) When land development consists of, or includes, the conservation and use of water for irrigation or domestic purposes, the information submitted to the County Supervisor will include a statement as to the source of the water supply, right to the use of the water, and the adequacy and quality of the supply.

(f) *Responsibilities for planning development.* Planning construction and land development and obtaining technical services in connection with drawings, specifications and cost estimates are the sole responsibility of the applicant, with such assistance from the County Supervisor or District Director (whichever is the appropriate loan processing and servicing officer for the type of loan involved), as may be necessary to be sure that the development is properly planned in order to protect FmHA or its successor agency under Public Law 103-354's security.

(1) *Responsibility of the applicant.* (i) The applicant will arrange for obtaining any required technical services from qualified technicians, tradespeople, and recognized plan services, and the applicant will furnish the FmHA or its successor agency under Public Law 103-354 sufficient information to describe fully the planned development and the manner in which it will be accomplished.

(ii) When items of construction or land development require drawings and specifications, they will be sufficiently complete to avoid any misunderstanding as to extent, kind, and quality of work to be performed. The applicant will provide FmHA or its successor agency under Public Law 103-354 with one copy of the drawings and specifications. Approval will be indicated by the applicant and acceptance for the purposes of the loan indicated by the County Supervisor or District Director on all sheets of the drawings

and at the end of the specifications, and both instruments will be a part of the loan docket. After the loan is closed, the borrower will retain a conformed copy of the approved drawings and specifications, and provide another conformed copy to the contractor. Items not requiring drawings and specifications may be described in narrative form.

(iii) FmHA or its successor agency under Public Law 103-354 will accept final drawings and specifications and any modifications thereof only after the documents have been certified in writing as being in conformance with the applicable development standard if required under paragraph (d)(1) of this section. Certification is required for all Single Family Housing (SFH) thermal designs (plans, specifications, and calculations).

(A) Certifications may be accepted from individuals or organizations who are trained and experienced in the compliance, interpretation or enforcement of the applicable development standards for drawings and specifications. Plan certifiers may be any of the following:

- (1) Licensed architects,
- (2) Professional engineers,
- (3) Plan reviewers certified by a national model code organization listed in exhibit E to this subpart,
- (4) Local building officials authorized to review and approve building plans and specifications, or
- (5) National codes organizations listed in exhibit E to this subpart.

(B) The license or authorization of the individual must be current at the time of the certification statement. A building permit (except as noted in paragraph (f)(1)(iii)(C)(2) of this section) or professional's stamp is not an acceptable substitute for the certification statement. However, a code compliance review conducted by one of the National recognized code organizations indicating no deficiencies or the noted deficiencies have been corrected is an acceptable substitute for the certification statement.

(C) For Single Family Housing (one to four family dwelling units) FmHA or its successor agency under Public Law 103-354 may also accept drawings and

specifications that have been certified by:

(1) Registered Professional Building Designers certified by the American Institute of Building Design.

(2) A local community, if that community has adopted, by reference, one of the model building codes and has trained official(s) who review(s) plans as well as inspect(s) construction for compliance as a requisite for issuing a building permit. The building permit, issued by the community, may serve as evidence of acceptance. The State Director will determine eligible communities and publish, as a State supplement to this section, a list of those communities that qualify.

(3) A plan service that provides drawings and specifications that are certified by individuals or organizations as listed in paragraph (f)(1)(iii)(A) or (f)(1)(iii)(C) (1) and (2) of this section as meeting the appropriate state adopted development standard.

(4) Builders/Contractors who provide 10-year warranty plans for the specific FmHA or its successor agency under Public Law 103-354 finance dwelling unit that meet the requirements of exhibit L of this subpart.

(5) Builders/Contractors that are approved by the United States Department of Housing and Urban Development (HUD) for self-certification.

(D) The modifications of certified drawings or specifications must be certified by the same individual or organization that certified the original drawings and specifications. If such individual or organization is not available, the entire set of modified drawings and specifications must be recertified.

(E) The certification of modifications for single family housing (SFH) construction may be waived if the builder or original author of the drawings and specifications provides a written statement that the modifications are not regulated by the applicable development standard. The County Supervisor may consult with the State Office Architect/Engineer as to acceptance of the statement and granting a waiver.

(F) All certifications of final drawings, specifications, and calculations shall be on Form FmHA or its successor agency under Public Law 103-354 1924-25, "Plan Certification."

(2) *Responsibility of the County Supervisor or District Director.* In accordance with program regulations for loans and grants they are required to process, the County Supervisor or District Director, for the sole benefit of FmHA or its successor agency under Public Law 103-354, will:

(i) Visit each farm or site on which the development is proposed. For an FO loan, the County Supervisor and the applicant will determine the items of development necessary to put the farm in a livable and operable condition at the outset. Prepare Form FmHA or its successor agency under Public Law 103-354 1924-1, when applicable in accordance with the Forms Manual Insert (FMI) for the form, after a complete understanding has been reached between the applicant and the County Supervisor regarding the development to be accomplished, including the dates each item of development will be started and completed.

(ii) Notify the loan or grant applicant in writing immediately if, after reviewing the preliminary proposal and inspecting the site, the proposal is not acceptable. If the proposal is acceptable, an understanding will be reached with the applicant concerning the starting date for each item of development.

(iii) Discuss with the applicant the FmHA or its successor agency under Public Law 103-354 requirements with respect to good construction and land development practices.

(iv) Advise the applicant regarding drawings, specifications, cost estimates, and other related material which the applicant must submit to the FmHA or its successor agency under Public Law 103-354 for review before the loan can be developed. Advise the applicant of the information necessary in the drawings, how the cost estimates should be prepared, the number of sets of drawings, specifications, and cost estimates required, and the necessity for furnishing such information promptly. Advise the applicant that FmHA or its successor agency under Public Law 103-354 will provide appropriate specification forms, Form FmHA or its successor agency under Public Law 103-354 1924-2, "Description of Materials," and Form FmHA or its

successor agency under Public Law 103-354 1924-3, "Service Building Specifications." The applicant may, however, use other properly prepared specifications.

(v) Advise the applicant regarding publications, plans, planning aids, engineering data, and other technical advice and assistance available through local, state, and Federal agencies, and private individuals and organizations.

(vi) Review the information furnished by the applicant to determine the completeness of the plans, adequacy of the cost estimates, suitability and soundness of the proposed development.

(vii) When appropriate, offer suggestions as to how drawings and specifications might be altered to improve the facility and better serve the needs of the applicant. The County Supervisor or District Director may assist the applicant in making revisions to the drawings. When appropriate, the contract documents will be forwarded to the State architect/engineer for review. For revisions requiring technical determinations that FmHA or its successor agency under Public Law 103-354 is not able to make, the applicant will be requested to obtain additional technical assistance.

(viii) Provide the applicant with a written list of changes required in the contract documents. The applicant will submit two complete revised (as requested) sets of contract documents, for approval. On one set, the County Supervisor or District Director will indicate acceptance on each sheet of the drawings, and on the cover of the specifications and all other contract documents. At least the date and the initials of the approval official must be shown. On projects where a consulting architect or engineer has been retained, this acceptance will be indicated only after the State Director has given written authorization. The marked set of documents shall be available at the job site at all times for review by FmHA or its successor agency under Public Law 103-354. The second set will become part of the loan docket.

(ix) Review the proposed method of doing the work and determine whether the work can be performed satisfactorily under the proposed method.

(x) Instruct the applicant not to incur any debts prior to loan closing for materials or labor or make any expenditures for such purposes with the expectation of being reimbursed from loan funds.

(xi) Instruct the applicant not to commence any construction nor cause any supplies or materials to be delivered to the construction site prior to loan closing.

(xii) Under certain conditions prescribed in exhibit H of this subpart, provide the applicant with a copy of the leaflet, "Warning—Lead-Based Paint Hazards," which is attachment 1 of exhibit H (available in any FmHA or its successor agency under Public Law 103-354 office), and the warning sheet, "Caution Note on Lead-Based Paint Hazard," which is attachment 2 of exhibit H (available in any FmHA or its successor agency under Public Law 103-354 office).

(g) *Surplus structures and use or sale of timber, sand, or stone.* In planning the development, the applicant and the County Supervisor or District Director should, when practicable, plan to use salvage from old buildings, timber, sand, gravel, or stone from the property. The borrower may sell surplus buildings, timber, sand, gravel, or stone that is not to be used in performing planned development and use net proceeds to pay costs of performing planned development work. In such a case:

(1) An agreement will be recorded in the narrative of Form FmHA or its successor agency under Public Law 103-354 1924-1 which as a minimum will:

(i) Identify the property to be sold, the estimated net proceeds to be received, and the approximate date by which the property will be sold.

(ii) Provide that the borrower will deposit the net proceeds in the supervised bank account and apply any funds remaining after the development is complete as an extra payment on the loan, or in accordance with § 1965.13(f) of subpart A of part 1965 of this chapter for farm program loans.

(2) The agreement will be considered by the Government as modifying the mortgage contract to the extent of authorizing and requiring the Government to release the identified property

subject to the conditions stated in the agreement without payment or other consideration at the time of release, regardless of whether or not the mortgage specifically refers to Form FmHA or its successor agency under Public Law 103-354 1924-1 or the agreement to release.

(3) If the FmHA or its successor agency under Public Law 103-354 loan will be secured by a junior lien, all prior lienholders must give written consent to the proposed sale and the use of the net proceeds before the loan is approved.

(h) *Review prior to performing development work.* For the sole benefit of FmHA or its successor agency under Public Law 103-354, prior to beginning development work, the County Supervisor or District Director will review planned development with the borrower. Adequacy of the drawings and specifications as well as the estimates will be checked to make sure the work can be completed within the time limits previously agreed upon and with available funds. Items and quantities of any materials the borrower has agreed to furnish will be checked and dates by which each item of development should be started will be checked in order that the work may be completed on schedule. If any changes in the plans and specifications are proposed, they should be within the general scope of the work as originally planned. Changes must be approved and processed in accordance with §1924.10 of this subpart. The appropriate procedure for performing development should be explained to the borrower. Copies of FmHA or its successor agency under Public Law 103-354 forms that will be used during the period of construction should be given to the borrower. The borrower should be advised as to the purpose of each form and at what period during construction each form will be used.

(i) *Time of starting development work.* Development work will be started as soon as feasible after the loan is closed. Except in cases in which advance commitments are made in accordance with 7 CFR part 3550 or according to §1924.13(e)(1)(vi)(A) or §1924.13(e)(2)(ix)(A) of this subpart, no commitments with respect to per-

forming planned development will be made by the Agency or the applicant before the loan is closed. The applicant will be instructed that before the loan is closed, debts should not be incurred for labor or materials, or expenditures made for such purposes, with the expectation of being reimbursed from funds except as provided in subpart A of part 1943 of this chapter, 7 CFR part 3550, and subpart E of part 1944 of this chapter. However, with the prior approval of the National Office, a State Supplement may be issued authorizing County Supervisors to permit applicants to commence welldrilling operations prior to loan closing, provided:

(1) It is necessary in the area to provide the water supply prior to loan closing,

(2) The applicant agrees in writing to pay with personal funds all costs incurred if a satisfactory water supply is not obtained,

(3) Any contractors and suppliers understand and agree that loan funds may not be available to make the payment,

(4) Such action will not result under applicable State law in the giving of priority to mechanics and materialmen's liens over the later recorded FmHA or its successor agency under Public Law 103-354 mortgage, and

(5) FmHA or its successor agency under Public Law 103-354 does not guarantee that the cost will be paid.

[52 FR 8002, Mar. 13, 1987, as amended at 52 FR 19283, May 22, 1987; 52 FR 48391, Dec. 22, 1987; 52 FR 48799, Dec. 28, 1987; 53 FR 43676, Oct. 28, 1988; 59 FR 43723, Aug. 25, 1994; 61 FR 65156, Dec. 11, 1996; 67 FR 78326, Dec. 14, 2002]

§ 1924.6 Performing development work.

All construction work will be performed by one, or a combination, of the following methods: Contract, borrower, mutual self-help, or owner-builder. All development work must be performed by a person, firm or organization qualified to provide the service. The mutual self-help method is performance of work by a group of families by mutual labor under the direction of a construction supervisor, as described in 7 CFR part 3550.