

RHS, RBS, RUS, FSA, USDA**§ 1955.56**

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

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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 intra-state 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;