# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 908

**[Valencia Orange Regulation 650; Valencia Orange Regulation 649, Amendment 1]**

### Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 13–June 19, 1980, and increases the quantity of such oranges that may be so shipped during the period June 6–June 12, 1980. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

**DATES:** The regulation becomes effective June 13, 1980 and the amendment is effective for the period June 6–June 12, 1980.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, 202–447–5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on June 10, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges continues to be steady.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 908.950 is added as follows:

**§ 908.950 Valencia Orange Regulation 650.**

*Order.* (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period June 13, 1980 through June 19, 1980, are established as follows:

(1) District 1: 353,000 cartons;

(2) District 2: 397,000 cartons;

(3) District 3: Open Movement.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" mean the same as defined in the marketing order.

**§ 908.949 [amended]**

2. Paragraph (a) in § 908.949 Valencia Orange Regulation 649 (45 FR 37801), is hereby amended to read:

(a) * * *

(1) District 1: 423,000 cartons;

(2) District 2: 477,000 cartons;

(3) District 3: Open Movement.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 11, 1980.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

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### Farmers Home Administration

### 7 CFR Parts 1804, 1821, 1822, 1872, 1901, 1924, 1933, 1942, 1943, 1944, and 1945

### Construction and Repair, Planning and Performing Construction and Other Development Amendment-Redesignation

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration redesignates and amends its regulations for planning and performing construction and other development. The action is taken to conform with general administrative restructuring of the Agency regulations and to comply with requirements of Executive Order 12044. The action clarifies and updates the regulations and provides uniformity between the numbering of FmHA regulations and the Code of Federal Regulations.

**EFFECTIVE DATE:** June 12, 1980.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the Farmers Home Administration, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, Frank Colon, Room 5345, Single Family Housing, (202–447–4808), Larry Hammond, Room 5325, Multiple Family Housing, (202–447–7207), Dan Ball, Room 6309, Environmental and Technology Staff, (202–447–3394).

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant". On July 6, 1979, the Farmers Home Administration published a notice of proposed rulemaking (44 FR 39432 through 39467) to amend and redesignate Subpart A, "Planning and Performing Development Work," Part 1804 of Chapter XVIII, Title 7 in the Code of Federal Regulations, as Subpart A, "Planning and Performing Construction and Other Development," under Part 1924, Chapter XVIII, Title 7 of the Code of Federal Regulations. Interested persons were invited to submit comments concerning the proposed rule by September 4, 1979. Because the address for submission of comments was inadvertently omitted, the period for public comment was extended to October 12, 1979. In response to the notice of proposed rulemaking, written comments from 18 organizations and individuals were received by FmHA. This final rule contains revisions to the proposed rule which reflect FmHA's consideration of the comments received as well as other information available to FmHA. Following is a discussion of the comments received:

1. It was suggested that the FmHA regulations for planning and performing site development work be consolidated with this subpart to reduce confusion and eliminate duplication.

FmHA has determined that the two regulations should not be consolidated as the resulting regulations would be bulky and complex. FmHA's experience is that major items such as site development and structure development should be maintained in separate regulations.

2. It was suggested that definitions of terms such as "construction," "building development," and "Land development" should be the same in both the site development regulations and this subpart.

To correct this deficiency, FmHA has expanded the definition for "land development" in the final rule. The definitions for the terms "building development," and "construction" remain as they were published in the proposed rule. These terms will be redefined in Subpart D, "Planning and Performing Site Development Work" of Part 1804 in this chapter, which is now in the process of revision. The term "land development" was expanded to include the term "site development" in this subpart.

3. It was suggested that FmHA Construction Inspectors be given authorities in the regulations.

Section 1924.3 indicates that Construction Inspectors are authorized to perform duties as authorized in their job descriptions. Consideration is now being given to broadening their job descriptions.

4. It was suggested that the regulations be clarified to identify the users of the insured 10-year warranty plan.

Section 1924.4(j) of this subpart was revised to limit the use of the insured 10-year warranty plan to single family housing only.

5. It was suggested that the scope of identity of interest not be extended to officers, director, stockholders or partners.

FmHA was unable to adopt the suggestion as it would tend to weaken the Agency's effort to avoid conflict of interest situations.

6. It was suggested that the definition of "mechanic's and materialmen's liens," be revised to "a lien on real property for persons presuming to have supplied labor or materials."

Section 1924.4(k) of this subpart was expanded by adding between the phrases "a lien on real property" and "in favor of persons" the phrase, "legally filed" to clarify the definition.

7. It was suggested that the full-time project representative required in Section 1924.4(m) of this subpart, be paid with FmHA funds.

The services performed by the project representative are a part of the architectural services and can, therefore, be paid with FmHA loan funds, under the borrower/architect agreement. Purposes for which loans can be used are covered in Subpart D of Part 1822 of this chapter.

8. It was suggested that the limitation for completion of development to 9 months be revised to exempt mutual self-help organizations from the requirement.

Section 1924.5(c)(1) was revised to allow a period of 15 months for completion of self-help projects.

9. It was suggested that exceptions be made from the 9 months limitation for completion of development work, to allow more time for completion in cases such as delays due to inclement weather.

Exceptions in the 9-month requirement for delays in completion of development due to circumstances beyond the contractor's control such as inclement weather or material shortages are contained in § 1924.6(a)(12)(vi)(A) of this subpart.

10. One organization indicated that the proposed rule does not provide construction standards for farm labor housing and that the guidelines provided are designed for rudimentary health and safety protections and should not be used for any farm labor construction whether for dormitories or for family units. It also suggested that the Agency require construction to full Minimum Property Standards (MPS) for all units designed for use for more than 6 months and they should be so designed that conversion to MPS housing will be possible without major alterations to the work in place.

The new § 1924.5(d)(iv) in the final rule complies mostly with this request.

11. It was suggested that the discretionary wording used in § 1924.5(d)(3) of the proposed rule concerning payment for technical services, may be interpreted by some field personnel as disallowing technical services prior to construction as an eligible development expense for inclusion in the loan.

FmHA does not believe that the statement should be further clarified. FmHA loan and grant making regulations prescribe the purposes for which loans and grants can be used.

12. It was indicated in one of the comments that requiring the approval of the District Director on all sheets of the drawings appears to be excessive. FmHA has determined that the action is needed as drawings and specifications will be the only documents that will be available to check compliance in the development of the project. Therefore, the signature of the District Director on all sheets of the drawings is necessary to assure that the original drawings are used until completion of the project. Section 1924.5(f)(2)(viii) was revised to require date and initials on only one set of drawings, specifications and contract documents.

13. It was indicated that the proposed rule establishes a clear procedure for reviewing preliminary proposals and inspecting sites, only it appears not to be consistent with the three step submission process found in Subpart D, Part 1804 of this chapter.

Subpart D is now in the process of revision and appropriate changes will be made in that Subpart to conform with the requirements of this Subpart in what pertains to review of preliminary proposals and inspection of sites.

14. It was suggested that the FmHA approved form should be more specific with respect to the type of financing as

no provision has been made for the conventional (interim) loan, and the FmHA "take-out" letter clearly places the liability on the lender and the developer. However, should government money be used for construction (direct draw-downs), the government (lender) advancing funds is at risk for the amounts advanced and it would appear that some liability must exist from FmHA even though "* * * FmHA will not become a party to a construction contract, or incur any liability under it."

FmHA has determined that information concerning interim financing should not be included in the contract form as interim financing is a transaction between the lender and the contractor with no participation on the part of the borrower or FmHA. Therefore, § 1924.13(e)(1)(vi) of this subpart remains as it was published in the proposed rule.

15. It was suggested that the Agency use a single FmHA approved contract form.

FmHA has determined that the Agency should also provide for the use of other contract forms provided they comply with the program and other legal requirements except that FmHA agrees that for Multiple Family Housing a single FmHA contract form should be used. FmHA is now in the process of developing such form.

16. It was suggested that State Directors be given the authority to waive surety bond requirements for experienced and reliable builders in small and medium-sized multi-family projects (up to 25 units) and allow for partial payment of 75 percent of work and materials in place because letters of credit, bonding and cash deposits are not readily available for small and medium-sized contractors and a partial payment of 60 percent of work and materials in place is too much retainage on a well supervised job.

FmHA has determined that the authorities contained in § 1924.6(a)(3) of this subpart, will suffice as guidance for the State Director in handling waivers for surety requirement. For example, "a $100,000" figure permits more definite guidance than "a number of units developed" figure, as suggested in the comment. Also, FmHA's experience is that payment for 60 percent of the work and materials in place is the most adequate payment to assure completion of the project and payment of bills for labor and materials procured.

17. It was suggested that the ceiling of $60,000 for requiring surety bonds not be increased, as an increase to $100,000 would remove all "prequalification checks" and "performance guarantee" on contractors undertaking contracts of less than $40,000.

FmHA has determined that the increase from $60,000 to $100,000 limitation for requiring surety bonds is necessary as the cost of construction has also increased at a fast rate during the last few years. The increase eliminates the extra cost of providing surety bonds which now may not be needed in projects under $100,000. The extra cost, although originally paid by the contractor, would eventually be borne by the borrower as part of the cost of construction.

18. It was suggested that surety requirements be solely the lenders decision when conventional funds are to be used because the lender, not the FmHA is "at risk" during construction. The conditions set forth in § 1924.6 paragraphs (a)(3)(i) (A) through (E) of this subpart should be left as a guide but not as absolute conditions.

Section 1924.6(a)(3)(i) was expanded to exempt from the surety requirements, projects where interim financing is used.

19. It was suggested that decisions regarding partial payments are the responsibility of the interim lender if conventional financing is used; however, all of the provisions in § 1924.6 of the proposed rule are written under the assumption that the government is providing all of the construction financing.

FmHA has determined that the section must not be revised to comply with the request as interim financing is only a temporary measure used for continuity of development. In this respect, the method of payments discussed in § 1924.13(e)(1)(vi)(A) of this subpart, is necessary for the protection of the Government's interest after payments are made to the interim lender.

20. Several comments concerning § 1924.8, "Development Work for Buildings Manufactured Offsite," and Exhibit B "Manufactured Structures-Housing Guidelines," of the proposed rule, were received by the FmHA. These are summarized and discussed in the following subparagraphs:

a. It was suggested that § 1924.8 and Exhibit B of the rule be replaced with an exhibit submitted by the writer to save time in processing loans for structures manufactured offsite.

FmHA considered the request and adopted most of the recommendations submitted in the comment which provide for timesaving in processing.

b. It was suggested that the requirements of § 1924.8 and Exhibit B of the proposed rule not apply to open wall and log manufactured homes.

The "NOTE" in Paragraph II B of Exhibit B of this subpart, covers structures such as open wall and log homes which are assembled entirely on the building site. These are excluded from the requirements of the Exhibit; however, they must comply with the other requirements of the Minimum Property Standards and Exhibit B of this subpart.

c. It was suggested that manufactured housing companies that sell nationwide be considered for review of the product only by the National Office of the FmHA, as local FmHA considerations at a local level are unknown to the manufacturer.

FmHA was unable to comply with this request as local considerations for construction only pertain to thermal standards which are contained in Exhibit D of this subpart. All other construction requirements are contained in the Minimum Property Standards which may be purchased by the contractor from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

21. Several comments concerning § 1924.9, "Inspection of Development Work" of this subpart, were received. Comments are summarized and discussed in the following subparagraphs:

a. It was suggested that § 1924.9(b)(3) be clarified to also include Rural Rental Housing projects in the exception of the first two inspections when an insured 10-year warranty plan is in effect.

FmHA was unable to comply with this request as its determination was that the insured 10-year warranty plan should initially apply to single family housing only. The definition of "Insured 10-year warranty plan" in § 1924.4(j) of this subpart was revised accordingly.

b. It was indicated that § 1924.9 of the proposed rule contradicts existing policy as stated in some Administrative Notices of the Agency, as persons other than County Supervisors and District Directors also provide gratis inspection services as authorized by those Notices. The final rule was expanded to also include validity of inspections conducted by qualified personnel other than County Supervisors and District Directors.

c. Several comments were received concerning the statement in § 1924.9(a) of this subpart, that "These inspections are solely to determine the adequacy of FmHA's security and not for the benefit of the borrower." It was indicated that through this rule, the Department is attempting to further immunize itself from liability caused by faulty or inadequate inspections conducted by FmHA employees. It was also requested that the statement be deleted from the final rule.

FmHA was unable to comply with this request as existing statutes provide for these construction inspections to be conducted by FmHA personnel solely to determine adequacy of the FmHA security. Language other than that contained in the final rule may create legal problems by not properly informing the public as to the purpose of these inspections. FmHA, however, will continue its present policy of assisting borrowers in having construction defects corrected.

22. It was suggested that the language in § 1924.9(b)(3) of the proposed rule concerning the insured 10-year warranty plan may mean that homes built with this warranty may qualify for 100 percent purchase loans versus 90 percent, without a conditional commitment.

Section 1924.9(b)(3) of the final rule was expanded to clarify the item relative to exempted inspections when the property is covered by an insured 10-year warranty plan. This, we expect, will also prevent any misinterpretation relative to the percentage of the market value of the security property that FmHA may finance in accordance with § 1822.7(e) of Subpart A, Part 1822 of this chapter.

23. Several comments concerning § 1924.13(a), "Architectural Services" of this Subpart, were received. These are summarized and discussed in the following subparagraphs:

a. It was suggested that the definition of architectural services of the old regulations be retained, particularly those services that may be performed by an engineer or experienced firm licensed by the State to perform architectural services.

FmHA's determination was not to retain the old definition and, therefore, adopted the definition contained in this final rule as the Agency's objective is to require that these services be performed by personnel fully qualified to perform these architectural services. The new definition in § 1924.4(n)(2) of the final rule pertains to "Engineering services."

b. It was suggested that "multiple-family housing" be defined as it is not clear whether § 1924.13(a) of the proposed rule includes more than 4-unit subdivisions, or it applies only to rental properties, regardless of construction type. Also, § 1804.64(b)(1) of Subpart D, Part 1804 of this chapter requires that new subdivisions of 10 or fewer units do not need complete architectural services.

Section 1924.13(a) of the final rule was expanded to indicate that full architectural services apply only to projects involving LH grants and all other RRH, RCH, and LH projects consisting of more than 4 units. Therefore, other projects in subdivisions such as separate individual homes are excluded from this section. Also, § 1804.64(b)(1), Subpart D, Part 1804 of this chapter is now in the process of revision and this item will be further clarified to prevent misinterpretation.

c. It was suggested that 10 percent of the architectural fee be withheld until the project is completed.

FmHA was unable to comply with this request as the architect should be paid on a timely basis when requirements of the borrower/architect agreement have been completed. If deficiencies appear at a later date, recourse is available to the borrower through the present regulations.

d. It was suggested that because borrowers such as Housing Authorities rarely, if ever, have any funds to pay before loan closing, for work such as architectural services, the FmHA arrange some assurance to a local lender or simply advance some loan proceeds for this purpose.

Arrangements with local lenders are discussed in § 1924.13(e)(1)(vi)(A) of this final rule. Advance of FmHA funds before the loan is closed is not possible as the Agency will not be assured the security required by statute.

e. It was suggested that the architect must be paid by someone other than those whose project is being inspected, and not allow the owner/builder to have any control over the inspecting architect.

FmHA was unable to comply with the request to revise the method of payments to the architect as these payments are presently monitored by the Agency. Concerning control of the architect by the borrower, the concern mainly would be on the inspections conducted by the architect. These are validated by certification to the FmHA and the borrower by the architect and this, we believe, will suffice to prevent deficient inspections of the project.

f. It was suggested that the Agency, on a national basis, prepare supplemental conditions which can be attached to the Borrower/Architect Agreement outlining FmHA administrative requirements of the architect in the performance of services to the borrower, under the headings of: construction documents phase, bidding phase, construction phase, and warranty phase.

FmHA agreed with the problem and will finalize a set of conditions to be attached to the Borrower/Architect Agreement.

g. It was suggested that § 1924.13(a)(4), "Agreement Between Borrower and Architect" be modified to clarify that FmHA is neither endorsing nor encouraging the use of the American Institute of Architects (AIA) construction contracts. If the contract is used, it is necessary to suggest to the borrowers that they specify the architect's drawings, specifications, and documents.

FmHA has determined that it is not endorsing nor encouraging the use of AIA forms, and has outlined the mimimum required criteria for any agreement for architectural services in this Section.

h. It was indicated that the requirement in § 1924.13(a)(5)(v)(F) of the proposed rule, for the architect to "assure" the work conforms with the intent of the contract documents and that a high quality of workmanship is maintained, is not consistent with similar work for the private sector. The architect cannot guarantee work by others. The most that can be expected is to endeavor to guard the owner against defects in material and workmanship.

To clarify the requirements for architect's performance, the Section has been revised for the final rule by substituting the phrase "verify that" for the word "assure."

i. It was suggested that requiring the architect to submit a trade by trade construction cost estimate is not consistent with similar work in the private sector. Retaining a professional estimator on a reimbursable basis would be workable.

The requirement in § 1924.13(a)(5)(iii)(B) of this subpart concerning a breakdown of the estimated total cost of development and the various trades is necessary in the construction documents phase. FmHA sees no reason why the architect cannot provide this breakdown.

24. It was suggested that the provision in § 1924.13(a)(5)(v)(F) of this subpart, that the State Director may require a full-time project representative in the employ of a project with a total cost of $750,000 or more, is an open-ended requirement which may become subject to abuse and discriminatory use. It was also suggested that the full-time project representative be required only when: (a) The construction involves buildings three stories in height or greater, (b) the construction involves site and design complexities not found in the normal course of construction, (c) any construction contract having a value in excess of $1.5 million, or (d) any construction contract exceeding $500,000 wherein the contractor is unable or unwilling to provide a 100 percent payment/performance bond.

FmHA's determination was that $750,000 or more is an adequate figure for requiring a full-time project representative. However, the language in the section has been expanded to indicated that the requirement is based on a determination by the State Director, and that the State Director shall state the reason for such determination to the borrower.

25. It was indicated that property line and topographic surveys have not been included in the list of items eligible as reimbursable to the architect.

Section 1924.13(b) of the final rule was expanded to include "surveying" in the list of reimbursable items.

26. Several comments concerning § 1924.13 (e)(1)(v), "Cost Certification" and "Certified Public Accountant Audit" of this Subpart, were received. Comments are summarized and discussed in the following subparagraphs:

a. It was suggested that the cost certification requirement be met only within 90 days after loan closing and for final payment as this item requires time and will result in higher subcontractor and supplier costs, or that this determination remain optional with the State Director, or: why not just cut out cost certification and require a CPA audit report on the final cost versus builder's proposal? It was also suggested that cost certification and CPA audit requirements be deleted altogether. FmHA was unable to comply with these requests as the Cost Certification and CPA requirements are only for cases where the State Director determines it appropriate, and in situations where there is identity of interest.

b. It was suggested that § 1924.13(e)(1)(v) be expanded to be more specific on the type of audit that would be required in the CPA statement.

FmHA has determined that § 1924.13(e)(1)(v) (B) and (C) sufficiently describe the scope of the audit required.

27. It was suggested that the Agency on a national basis, prepare supplements to the contract which will meet administrative requirements such as labor standards provisions and the requirements for affirmative action to insure Equal Employment Opportunity.

FmHA has agreed with the suggestion and will prepare a supplement to be attached to contracts for more complex construction. Until this supplement is made available, the requirements provided in § 1924.6, paragraphs (a) (4) through (9) of this subpart are applicable to each contract.

28. It was suggested that interim lenders be allowed to make partial payments for materials stored offsite as it is the lender's risk.

FmHA sees no reason for deviation from the terms of the construction contract, especially to allow payment for materials stored offsite.

29. It was suggested that the provisions for reasonable rates and terms for interim financing be better defined to avoid abuse of the program. Points (service charges and discounts) could be handled by allowing a stated reasonable limit, say 2 percent, with provisions allowing an applicant to accept more expensive terms if the applicant so chooses.

FmHA was unable to comply with this request. The experience is that in obtaining interim financing, builders will seek the best terms available and with those terms they can afford. Restrictions in this respect to be set by FmHA may not reflect changing situations and would only make borrowing more difficult for the builder.

30. It was suggested that in cost certification for the owner/builder method in § 1924.13(e)(2)(vii)(B), the high level overhead costs be acknowledge by providing guidelines for overhead and profits.

FmHA has determined that such guidelines are not necessary as the amount of overhead and profit will have been previously agreed upon as specified in the cost breakdown provided in accordance with § 1924.13(e)(2)(i)(G) of this subpart.

31. It was suggested that § 1924.13(e)(2)(ix) be revised to allow payment to owner/builder where incomplete work is due to ligitimate reasons.

FmHA has determined that in order to assure the project is completed in a timely manner and that funds are not expended in excess of the value of the project, the Section should not be revised to authorize payment for incomplete work.

32. It was suggested that Exhibit D of this subpart be withdrawn and substituted with a package submitted by the writer.

Some editorial changes were also made.

Therefore, Chapter XVIII is amended as follows:

## SUBCHAPTER A—GENERAL REGULATIONS

## PART 1804—PLANNING AND PERFORMING DEVELOPMENT WORK

### Subpart A—Planning and Performing Development Work [Deleted]

1. Subpart A of Part 1804 is hereby deleted from the Code of Federal Regulations.

## SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

## PART 1821—FARM PURCHASE AND DEVELOPMENT LOANS TO INDIVIDUALS [Deleted]

2. The entry for Part 1821 is hereby deleted from the Code of Federal Regulations.

## PART 1822—RURAL HOUSING LOANS AND GRANTS

### Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

#### § 1822.9 [Amended]

3. In § 1822.9(a), line 4, change the reference from "1804" to "1924".

### Subpart D—Rural Rental Housing Loan Policies, Procedures, and Authorizations

#### § 1822.85 [Amended]

4. In § 1822.85, paragraph (o)(3), line 8, change the reference from "subpart A and D of Part 1804" to "Subpart D of Part 1804 and Subpart A of Part 1924".

#### § 1822.88 [Amended]

5. In § 1822.88, paragraph (t), lines 5 and 6, change the reference from "§ 1804.5(m)(2)(iii) of this chapter" to "§ 1924.13(e)(1)(ii)(H) of Part 1924, Subpart A."

#### § 1822.90 [Amended]

6. In § 1822.90, paragraph (c)(1), lines 4 and 5, change the reference from "Subpart A and D of Part 1804" to "Subpart D of Part 1804 and Subpart A of Part 1924".

7. In § 1822.90, paragraph (c)(2), line 4, change the reference from "1804" to "1924".

8. § 1822.90, paragraph (d)(1), lines 4, 5 and 6, change the reference from "Subpart A and Subpart D of Part 1804 of this chapter, except § 1804.5(h)(3)(ii)" to "Subpart D of Part 1804 and Subpart A of Part 1924.

9. In § 1822.90, paragraph (l)(1), line 2, change the reference from "1804" to "1924".

#### Exhibit O [Amended]

10. In Exhibit O, paragraph V. A. 1., line 5, change the reference from "FmHA Instruction 424.1" to "subpart A of Part 1924".

### Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

#### § 1822.267 [Amended]

11. In § 1822.267, paragraph (e), line 3, change the reference from "1804" to "1924".

### Subpart H—Rural Housing Conditional Commitments

**§ 1822.310 [Amended]**

12. In § 1822.310, line 3, change the reference from "1804" to "1924".

## SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

## PART 1872—REAL ESTATE SECURITY

### Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

**§ 1872.3 [Amended]**

13. In § 1872.3, paragraph (d)(3)(iii), lines 3 and 6, change the reference from "1804" to "Part 1804 Subpart D and Part 1924 Subpart A of this chapter".

**§ 1872.4 [Amended]**

14. In § 1872.4, paragraph (d)(2), line 3, change the reference from "1804" to "1924".

## SUBCHAPTER H—PROGRAM REGULATIONS

## PART 1901—PROGRAM-RELATED INSTRUCTIONS

### Subpart O—Jointly Funded Grant Assistance to State and Local Governments and Nonprofit Organizations

**§ 1901.711 [Amended]**

15. In § 1901.711, paragraph (d)(2), lines 10 and 11, change the reference from "Part 1804 Subpart A (FmHA Instruction 424.1)" to "Part 1924, Subpart A".

## PART 1924—CONSTRUCTION AND REPAIR

### Subpart F—Complaints and Compensation for Construction Defects

**§ 1924.262 [Amended]**

16. In § 1924.262, lines 2 and 3, change the reference from "Part 1804 (FmHA Instruction 424.1)" to "Part 1924, Subpart A".

## PART 1933—LOAN AND GRANT PROGRAMS (GROUP)

### Subpart I—Self-Help Technical Assistance Grants

**§ 1933.412 [Amended]**

17. In § 1933.412, lines 3 and 4, change the reference from "Subparts A and D of Part 1804 (FmHA Instruction 424.1 and 424.5)" to "Subpart D of Part 1804 (FmHA Instruction 424.5) and Subpart A of Part 1924".

## PART 1942—ASSOCIATIONS

### Subpart A—Community Facility Loans

**§ 1942.18 [Amended]**

18. In § 1942.18, paragraph (c)(2), lines 8 and 9, change the reference from "Part 1804 of this Chapter (FmHA Instruction 424.1, Exhibit E)" to "Part 1924, Subpart A, Exhibit H".

## PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

### Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

**§ 1943.26 [Amended]**

19. In § 1943.26, lines 3 and 4, change the reference from "Part 1804 of this chapter (FmHA Instruction 424.1)" to "Part 1924 Subpart A".

### Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

**§ 1943.76 [Amended]**

20. In § 1943.76, lines 3 and 4, change the reference from "Part 1804 of this chapter (FmHA Instruction 424.1)", to "Part 1924 Subpart A".

### Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

**§ 1943.126 [Amended]**

21. In § 1943.126, lines 3 and 4, change the reference from "Part 1804 of this chapter (FmHA Instruction 424.1)" to "Part 1924 Subpart A".

## PART 1944—HOUSING

### Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

**§ 1944.169 [Amended]**

22. In § 1944.169, paragraph (b), lines 8 and 9, change the reference from "Part 1804 of this chapter (FmHA Instruction 424.1)" to "Part 1924".

23. In § 1944.169, paragraph (c)(1), lines 3 and 4, change the reference from "Part 1804 of this chapter (FmHA Instruction 424.1)" to "Part 1924" and in lines 7, 8 and 9 change the reference from "Part 1804 of this chapter (FmHA Instruction 424.1)" to "Part 1924".

24. In § 1944.169, paragraph (i)(1), lines 2 and 3, change the reference from "Part 1804 of this chapter (FmHA Instruction 424.1)" to "Part 1924".

**Labor Housing Loan and Grant Application Handbook [Amended]**

25. In paragraph 3. under the heading "Information to be Submitted with Application for Federal Assistance (Short Form)", lines 3 and 4, change the reference from "Part 1804 of this Chapter (FmHA Instruction 424.1)", to "Part 1924".

26. In paragraph I under the heading, "Labor Housing Construction Guidelines", lines 16 and 17, change the reference from "Part 1804 of this Chapter (FmHA Instruction 424.1)" to "Part 1924".

## PART 1945—EMERGENCY

### Subpart B—Emergency Loan Policies, Procedures, and Authorizations

**§ 1945.75 [Amended]**

27. In § 1945.75, lines 1, 2, 3 and 4, change the reference from "Subpart A of Part 1804 and Subpart A of Part 1809 of this chapter (FmHA Instructions 424.1 and 422.1, respectively)" to "Part 1924 Subpart A and Part 1809 Subpart A (FmHA Instruction 422.1)".

### Subpart C—Economic Emergency Loans

**§ 1945.114 [Amended]**

28. In § 1945.114, lines 1, 2 and 3, change the reference from "Parts 1804 and 1809 of this chapter (FmHA Instructions 424.1 and 422.1, respectively)" to "Part 1924 Subpart A and Part 1809 Subpart A (FmHA Instruction 422.1)".

## PART 1924—CONSTRUCTION AND REPAIR

### Subpart A—Planning and Performing Construction and Other Development

29. As added, Subpart A of Part 1924 reads as follows:

### Subpart A—Planning and Performing Construction and Other Development

Exhibit D Thermal performance construction standards.
Exhibit E Preconstruction conference.
Exhibit F Payment bond.
Exhibit G Performance bond.
Exhibit H Prohibition of lead-based paints.

## Subpart A—Planning and Performing Construction and Other Development

### § 1924.1 Purpose.

This Subpart prescribes the basic Farmers Home Administration (FmHA) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), single unit Labor Housing (LH), Recreation (RL), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multiunit (LH) loans and grants, and Rural Housing Site (RHS) loans.

### § 1924.2 [Reserved]

### § 1924.3 Authorities and responsibilities.

The County Supervisor and District Director are authorized to redelegate, in writing, any authority delegated to them in this subpart to the Assistant County Supervisor and Assistant District Director, respectively, when determined to be qualified. FmHA Construction Inspectors, District Loan Assistants, and County Office Assistants are authorized to perform duties under this Subpart as authorized in their job descriptions.

### § 1924.4 Definitions.

(a) *Construction.* Such work as erecting, repairing, remodeling, relocating, adding to or salvaging any building or structure, and the installation or repair of, or addition to, heating and electrical systems, water systems, sewage disposal systems, walks, steps, driveways, and landscaping.

(b) *Contract documents.* The borrower-contractor agreement, the conditions of the contract (general, supplementary, and other), the drawings, specifications, all addenda issued before executing the contract, all approved modifications thereto, and any other items stipulated as being included in the contract documents.

(c) *Contractor.* The individual or organization with whom the borrower enters into a contract for construction or land development, or both.

(d) *County Supervisor and District Director.* For the purpose of this subpart, "County Supervisor" and "District Director" also mean "Assistant Area Loan Specialist" and "Area Loan Specialist," respectively, in Alaska.

(e) *Date of commencement of work.* The date established in a "Notice to Proceed" or, in the absence of such notice, the date of the contract or other date as may be established in it or by the parties to it.

(f) *Date of substantial completion.* The date certified by the Project Architect/Engineer or County Supervisor when it is possible in accordance with any contract documents and applicable State or local codes and ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and/or use of the buildings or development.

(g) *Development.* Construction and land development.

(h) *Identity of interest.* Identity of interest will be construed as existing between the applicant (the party of the first part) and general contractors, architects, engineers, attorneys, subcontractors, material suppliers, or equipment lessors (parties of the second part) under any of the following conditions:

(1) When there is any financial interest of the party of the first part in the party of the second part. The providing of normal professional services by architects, engineers, attorneys or accountants with a client-professional relationship shall not constitute an identity of interest.

(2) When one or more of the officers, directors, stockholders or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part.

(3) When any officer, director, stockholder or partner of the party of the first part has any financial interest whatsoever in the party of the second part.

(4) When the party of the second part advances any funds to the party of the first part.

(5) When the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract.

(6) When the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them.

(7) When there exist or come into being any side deals, agreements, contracts or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents except as approved by FmHA.

(i) *Insured 10 year warranty plan.* Any insured 10 year warranty plan is applicable only to single family housing. The warrantor will be encouraged to provide FmHA with a copy of the inspection report. However, when a copy of the inspection report is not available, the FmHA official will be guided by the provisions of § 1924.6(a)(12)(v)(B) to make partial payments. If further assurance is deemed necessary to justify partial payment, the FmHA official may make an onsite inspection or require additional information. The plan must consist of the following:

(1) The insurance coverage backing the insured plan must be by an insurance company approved to offer that coverage by the proper regulatory agency of the State in which the property is located.

(2) The entire cost of the insurance coverage must be prepaid by the contractor and coverage automatically transferred to subsequent owners without additional cost.

(3) The insurance coverage must not be cancellable by the insurer.

(4) The protection plan must provide an insurance-backed warranty covering the following:

(i) For one year from the effective date, defects caused by faulty workmanship or defective materials.

(ii) During the second year after the effective date, the warranty must continue to cover the wiring, piping, and duct work of the electrical, plumbing, heating, and cooling systems.

(iii) During the third through the tenth years, the warranty must continue to cover structural defects which seriously affect livability.

(5) A system for complaint handling which includes conciliation, and, if necessary to resolve matters in dispute, airbitration arranged by the American Arbitration Association or a similar body.

(j) *Land development.* Includes items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, pollution abatement and control measures, and other items of land improvement which conserve or permanently enhance productivity. Also, land development for structures includes the applicable items above, and items such as rough and finish grading, retaining walls, water supply and waste disposal facilities, streets, curbs and gutters, sidewalks, entrancewalks, driveways, parking areas, landscaping and other related structures.

(k) *Mechanic's and materialmen's liens.* A lien on real property in favor of persons supplying labor and/or materials for the construction for the value of labor and/or materials supplied by them. In some jurisdictions, a mechanic's lien also exists for the value of professional services.

(l) *Minimum property standards.* The Department of Housing and urban Development (HUD) Minimum Property Standards (MPS) which have been adopted by the FmHA for housing financed with RH, RRH, RCH, LH, and FO loans. The MPS, available in all FmHA County Offices, supplements this Subpart with the technical requirements for minimum acceptable design, materials and construction methods. The MPS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(m) *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, a full-time project representative shall be employed.

(n) *Technical services.* Applicants will be responsible for providing 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.

(o) *Warranty.* A legally enforceable assurance, in writing, 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.

**§ 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 424-1, "Development Plan," except Form FmHA 424-1 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 and 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 as provided in § 1924.6(a)(12)(vi)(A), and for Mutual Self-Help housing where work may be scheduled for completion within a period of 15 months.

(2) Development for farmer 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. All improvements to the property will conform to applicable laws, ordinances, codes, regulations related to safety and the sanitation of buildings, and Exhibit D of this Subpart which supersedes the applicable MPS as related to thermal performance standards.

(i) In new housing, all design materials and construction will meet or exceed the requirements of the appropriate mandatory MPS.

(A) MPS for One and Two Family Dwellings No. 4900.1.

(B) MPS for Multifamily Housing No. 4910.1.

(C) The MPS Manual of Acceptable Practices (MPS-MAP) No. 4930.1 is a nonmandatory fully illustrated guidance for better understanding of the mandatory standards.

(D) MPS for solar heating and domestic hot water systems No. 4930.2.

(ii) Existing housing to be purchased with loan funds will meet or exceed the requirements of paragraph 100-3 in MPS 4900.1 or 4910.1. Housing built before 1953, when housing standards were not generally used, will be guided by HUD Handbook No. 4940.4, "Minimum Design Standards for Rehabilitation for Residential Properties." A copy of this handbook is available for review in any FmHA State Office. However, any existing housing should meet the requirements of the MPS as near as practicable, especially those dealing with security, health, fire protection, safety, and construction.

(iii) The design and construction for housing repairs made with FmHA loan or grant funds will, as near as practical, meet the requirements of the MPS as determined by the County Supervisor with assistance from the State Office as necessary.

(iv) Farm Labor housing design and construction standards for family occupancy of 6 or more months will meet or exceed the MPS for Multifamily Housing No. 4910.1. Dormitory and other type housing units for non-family occupancy of 6 months or more should be in substantial conformance with the design and construction standards of the MPS for Multifamily Housing No. 4910.1, and must be developed for use that meets or exceeds the requirements of the Department of Labor, Bureau of Employment Security. Farm Labor housing design and construction standards for occupancy of less than 6 months may be less than MPS for Multifamily Housing No. 4910.1. It shall be constructed in such manner as to be safe and weatherproof for the time occupied, be equipped with potable water and modern sanitary facilities, including kitchen sink, toilet, and bathing facilities, other reasonable amenities, and provide for the health and comfort of the tenants. Such housing shall be constructed to facilitate conversion to the requirements for housing occupied 6 or more months. The housing must be located in a safe and sanitary environment with adequate areas appropriate for recreation.

(2) Adequate drawings, specifications, and estimates will be provided to fully describe the work. Technical data, tests, or engineering evaluations may be required to support the design of the development. The "List of Required Drawings and Specifications," Exhibit C to this subpart, describes the drawings and the specifications that are required to be included in the application for

building construction, and Exhibit A of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5) describes the drawings that should be included for development of building sites. 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 Agricultural Colleges, the Extension Service (ES), Soil Conservation Service (SCS) and other reliable sources.

(3) Whenever possible, the borrower will pay with personal funds any charges made for technical services in connection with the borrower's proposed development. If this cannot be done, the cost of such services may be included on the loan.

(e) *Land development.* (1) In planning land development, consideration will be given to the 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 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 should also be guided by the requirements of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5).

(3) Adequate plans and descriptive material will be provided to fully describe the work.

(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 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'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 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. Inadequate drawings and specifications are not acceptable. The applicant will provide the FmHA 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. After the work is completed and materials and labor claims have been paid, the County or District Office approved copy may be returned to the borrower. Items not requiring drawings and specifications may be described in narrative form.

(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 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 424-1 when applicable in accordance with the Forms Manual Insert (FMI) for the form, after a complete understanding has been reached between the borrower 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 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 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 for review before the loan can be developed. The applicant should be informed 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. The applicant should also be advised that FmHA will provide appropriate specification forms, Form FmHA 424-2, "Description of Materials," and Form FmHA 424-3, "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 and whether the proposed land development complies with applicable policy.

(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 borrower. The County Supervisor or District Director may assist the borrower in making revisions to the drawings. When appropriate, the contract documents will be forwarded to the State architect/engineer for review. For revisions that require technical determinations which FmHA 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. 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, "Lead-Based Paint Hazards, Symptoms, Treatment, and Techniques for Eliminating Hazards," which is available in FmHA County Offices, and attach to Form FmHA 440-41, "Disclosure Statement for Loans Secured by Real Estate," the warning sheet, "Caution Note on Lead-Based Paint Hazard," which is Attachment 1 of this Exhibit.

(g) *Surplus structures and use or sale of timber, sand, or stone.* In planning the development the applicant and the County Supervisor 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 424-1 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 excess net proceeds as an extra payment on the loan.

(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 424-1 or the agreement to release.

(3) If the FmHA loan will be secured by a junior lien, before the loan is approved all prior lienholders must give written consent to the proposed sale and the use of the net proceeds.

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedure in Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

(h) *Review prior to performing development work.* 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. The appropriate procedure for performing development should be explained to the borrower. Copies of FmHA 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 FmHA Instruction 444.2 (available in all FmHA offices) and Subpart H of Part 1822 of this chapter (FmHA Instruction 444.9) or according to § 1924.13(e)(1)(vi)(A) or § 1924.13(e)(2)(viii)(A), no commitments with respect to performing planned development will be made by the County Supervisor, District Director, 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 loan funds except as provided in Subpart A of Part 1943 of this chapter and Subparts A and D of Part 1822 of this chapter (FmHA Instructions 444.1 and 444.5). 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, and (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 mortgage.

**§ 1924.6 Performing development work.**

All construction work will be performed by one of, 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.

(a) *Contract method.* This method of development will be used for all major construction except in cases where it is clearly not possible to obtain a contract at a reasonable or competitive cost. Work under this method is performed in accordance with a written contract.

(1) *Forms used.* Form FmHA 424-6, "Construction Contract," should be used. However, other contract documents acceptable to the loan approval official and containing the requirements of Subpart E, Part 1901 of this chapter, may be used provided they are customarily used in the area and protect the interest of the borrower and the Government with respect to compliance with items such as the drawings, specifications, payments for work and inspections, completion, nondiscrimination in construction work, and acceptance of the work. If needed, the Office of the General Counsel will be consulted. The United States (including FmHA) will not become a party to a construction contract or incur any liability under it. Form FmHA 424-19, "Builder's Warranty," or other approved warranty as described in §§ 1924.4(i) and 1924.9(b)(3), and normal trade warranties on items of equipment will be issued to the borrower by the contractor at the completion of:

(i) New building construction,

(ii) Dwelling rehabilitation by the contract method,

(iii) All cases of newly completed and previously unoccupied dwellings, or

(iv) Construction under conditional commitments issued to builders and sellers.

(2) *Contract provisions.* Contracts will have a listing of attachments and the provisions of the contract will include:

(i) The contract sum.

(ii) The dates for starting and completing the work.

(iii) The amount of liquidated damages to be charged.

(iv) The amount, method, and frequency of payment.

(v) Whether or not surety bonds will be provided.

(vi) The requirement that changes or additions must have prior written approval of FmHA.

(3) *Surety requirements.* (i) Unless an exception is granted in accordance with paragraph (a)(3)(iii) of this section or when interim financing will be used, surety that guarantees both payment and performance in the amount of the contract will be furnished when one or more of the following conditions exist:

(A) The contract exceeds $100,000.

(B) The loan approval official determines that a surety bond appears advisable to protect the borrower against default of the contractor.

(C) The applicant requests a surety bond.

(D) The contract provides for partial payments in excess of the amount of 60 percent of the value of the work in place.

(E) The contract provides for partial payments for materials suitably stored on the site.

(ii) If surety bonds are required the construction contract must indicate that the contractor will furnish properly executed surety bonds prior to the start of any work. Exhibits F and G of this subpart will be used as the forms of payment bond and performance bond to be provided. Unless non-corporate surety is provided, the surety bonds may only be obtained from a corporate bonding company listed on the current Department of the Treasury Circular 570 (published annually in the Federal Register), as holding a certificate of authority as an acceptable surety on Federal bonds and as legally doing business in the State where the land is located. Non-corporate sureties are not recommended and the State Director will be responsible for determining the acceptability of the individual or individuals proposed as sureties on the bonds. Non-corporate sureties must provide adequate protection, and the individual or individuals proposed as sureties must collectively have cash or other liquid assets easily convertible to cash in an amount at least equal to 25 percent more than the contract amount. Fees charged for non-corporate sureties may not exceed fees charged by corporate sureties on bonds of equal amount, and in no case may surety be provided by the applicant or any person or organization with an identity of interest in the applicant's operation. The United States (including FmHA) will incur no liability related in any way to a performance or payment bond provided in connection with a construction contract. FmHA will be named as a co-obligee in the performance and payment bonds unless prohibited by State law. Bonds must comply with local statutory requirements.

(iii) When an experienced and reliable contractor cannot obtain payment and performance bonds meeting the surety requirements of paragraph (a)(3)(ii) of this section, the State Director may entertain a request from the applicant for an exception to the surety requirements. The applicant's request must specifically state why the proposed contractor is unable to obtain payment and performance bonds meeting the surety requirements, and why it is financially advantageous for the applicant to award the contract to the proposed contractor without the required bonds. If the applicant's request is reasonable and justified, and if the proposed contractor is reliable and experienced in the construction of projects of similar size, design, scope, and complexity, the State Director may grant an exception to the surety requirements for loans or grants within the State Director's approval authority and accept one or a combination of the following:

(A) An unconditional and irrevocable letter of credit issued by a lending institution which has been reviewed and approved by OGC. In such cases, the construction contract must indicate that the contractor will furnish a properly executed letter of credit from a lending institution acceptable to FmHA prior to the start of any work. In addition, the letter of credit must stipulate that the lending institution, upon written notification by FmHA of the contractor's failure to perform under the terms of the contract, will advance funds up to the amount of the contract (including all FmHA approved contract change orders) to satisfy all prior debts incurred by the contractor in performing the contract and all funds necessary to complete the work. Payments may be made to the contractor in accordance with § 1924.6(a)(12)(i)(C) as if full surety bonds were being provided.

(B) If a letter of credit satisfying the conditions of paragraph (A) cannot be obtained, the State Director may accept for deposit into an interest or non-interest bearing supervised bank account, cash, bank drafts, certified checks, and postal money orders, in the amount of the contract. In such cases the construction contract must indicate that the contractor will furnish the required deposit prior to the start of any work. Payments may be made to the contractor in accordance with § 1924.6(a)(12)(i)(C) as if full surety bonds were being provided.

(C) When the provisions of paragraphs (a)(3)(iii) (A) or (B) of this section can be met except that a surety bond, a letter of credit, and/or deposits are not obtainable in full amount of the contract, the State Director may accept an amount less than the full amount of the contract provided all of the following conditions are met:

(*1*) The contractor provides a surety bond, a letter of credit, or deposits in the greatest amount possible, and provides documentation indicating the reasons why amounts exceeding the proposed amount cannot be provided.

(*2*) The applicant agrees to the amount of the surety bond, letter of credit, or deposits proposed, and the State Director determines that the applicant has the financial capability to withstand any financial loss due to default of the contractor.

(*3*) In the opinion of the State Director, the proposed amount and the method of payment will provide adequate protection for the borrower and the Government against default of the contractor.

(*4*) The contract provides for partial payments not to exceed 90 percent of the value of the work in place for that portion of the total contract which is guaranteed by an acceptable surety bond, letter of credit, or deposits, and partial payments not to exceed 60 percent of the value of the work in place for that portion of the total contract which is not guaranteed by surety, letter of credit, or deposits.

Example:

Contractor has a surety bond which guarantees payment and performance in an amount of $150,000 which represents 75 percent of the total contract amount of $200,000. The contractor's first request for payment appears thus:

- value of work in place is $10,000
- payment for work guaranteed by surety = 75 percent × $10,000 × 90 percent = *$6,750*
- payment for work not guaranteed be surety = 25 percent × $10,000 × 60 percent = *$1,500*

Authorized payment = $8,250

(Each partial payment shall reflect values for work guaranteed by surety, letter of credit, or deposits, and work not so guaranteed).

(4) *Equal opportunity.* $1901.205 of Subpart E of Part 1901 of this chapter applies to all loans or grants involving construction contracts and subcontracts in excess of $10,000.

(5) *Labor provisions.* The provisions of Subpart D of Part 1901 of this chapter concerning wage and labor requirements will apply when the contract involves either LH grant assistance, or 9 or more units in a project being assisted under the HUD Section 8 housing assistance payment program for new construction.

(6) *Historical and archaeological preservation.* The provisions of Subpart F of Part 1901 of this chapter concerning the protection of historical and archaeological properties will apply to all construction financed in whole or in part by FmHA loans and grants. These provisions have special applicability to development in areas designated by SCS as Resource Conservation and Development (RC&D) areas. (See Part 1942, Subpart).

(7) *Air and water acts.* Under Executive Order 11738, all loans or grants involving construction contracts for more than $100,000 must meet all the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Water Pollution Control Act (33 U.S.C., 1813). The contract should contain provisions obligating the contractor as a condition for the award of the contract as follows:

(i) To notify the owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award. .

(ii) To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities as of the date of contract award.

(iii) To include or cause to be included the above criteria and requirements of paragraphs (a) (7) (i) and (ii) of this section in every nonexempt subcontract, and that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

(8) *Architectural barriers.* In accordance with the Architectural Barriers Act of 1968, Pub. L. 90–480 (42 U.S.C. 4153), as amended, all facilities financed with FmHA loans and grants and which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this Act. Copies of the Act may be obtained from the Executive Director, Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201.

(9) *National Environmental Policy Act.* The provisions of Subpart G of Part 1901 of this chapter concerning Environmental Impact Assessments and Statements will apply to all loans and grants including those where 5 or more units in a project are being assisted under the HUD Section 8 housing assistance payment program for new construction.

(10) *Obtaining bids and selecting contractor.* (i) Contracts may be awarded through competitive bidding or by direct selection and negotiation .

(ii) Competitive bidding should be encouraged. The borrower should obtain bids from as many qualified contractors, dealers, or tradespeople as feasible depending on the method and type of construction.

(iii) When a price has already been negotiated by an applicant and a contractor, whether additional negotiation or bids will be required is a matter of judgment. Additional negotiation or bids will not be required if:

(A) The construction is of the size and type that can appropriately be financed with an FmHA loan; and

(B) The cost of the construction compares favorably with the cost of similar construction that has recently been completed in the area; and

(C) The applicant clearly has the ability to repay the loan and to make any downpayment that may be required; and

(D) The proposed contract is with a reliable contractor.

(iv) If the conditions of paragraph (a)(10)(iii) of this section cannot be met, additional negotiations or bids should be required, or the applicant may need to start with an entirely new plan in order to obtain adequate development within the applicant's ability to pay.

(v) If the award of the contract is by competitive bidding, Form FmHA 424–5, "Invitation for Bid (Construction Contract)," or another similar invitation bid form containing the requirements of Subpart E of Part 1901 of this chapter, may be used. All contractors from whom bids are requested should be informed of all conditions of the contract including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms FmHA 424–6 and FmHA 400–6, "Compliance Statement," also should be provided to the prospective bidders.

(11) *Awarding the contract.* The borrower, with the assistance of the County Supervisor or District Director, will consider the amounts of the bids or proposals, and all conditions which were listed in the "Invitation for Bid." On the basis of these considerations, the borrower will select and notify the successful bidder.

(i) Before work commences, there will be a preconstruction conference between the borrower(s), contractor, architect/engineer (if applicable), and the County Supervisor, District Director, or other FmHA employee having a knowledge of contracts and construction practices. During this discussion a mutual understanding will be reached on the items shown in Exhibit E of this subpart.

(ii) A brief summary of the items covered should be entered in the running case record.

(iii) The contract will then be prepared and executed and copies distributed in accordance with the FMI for Form FmHA 424–6.

(iv) Within 10 days after a borrower/contractor's contract or subcontract in excess of $10,000 is received in the FmHA County or District Office, the responsible FmHA Official will send a report similar in form and content to Exhibit C of Subpart E of Part 1901 of this chapter to the Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, DC 20210. The report must contain, at least, the following information: Contractor's name, address and telephone number; employer's identification number; amount, starting date and planned completion date of the contract; contract number, and city and DOL region of the contract site. The information for this report should be obtained from the contractor when the contract is awarded.

(12) *Payments for work done by the contract method.* (i) Payments will be made in accordance with one of the following methods:

(A) The "One Lump-Sum" payment method will be used when the payment will be made in one lump-sum for the whole contract.

(B) The "Partial payments not to exceed 60 percent of the value of the work in place" payment method will be used when the contractor does not provide surety bond, a letter of credit, or deposits.

(C) The "Partial payments in the amount of 90 percent of the value of the work in place and of the value of the materials suitably stored at the site" payment method will be used when the contractor provides a surety bond equal to the total contract amount.

(D) The "Partial paymetns which reflect the portions of the contract amount which is guaranteed" method will be used when the contractor provides surety bonds, a letter of credit, or deposits less than the total amount of the contract in accordance with the provisions of § 1924.6(a)(3)(iii)(C).

(ii) When Form FmHA 424.6 is used, the appropriate payment clause will be checked and the other payment clauses not used will be effectively crossed out.

(iii) When a contract form other than Form FmHA 424–6 is used, the payment clause must conform with § 1924.6(a)(12)(i) and the appropriate clause as set forth in Form FmHA 424–6.

(iv) The borrower and FmHA must take precautionary measures to see that all payments made to the contractor are properly applied against bills for materials and labor procured under the contract. Prior to making any partial payment on any contract where a surety bond is not used, the contractor will be required to furnish the borrower and the FmHA with a statement showing the total amount owed to date for materials and labor procured under the contract. The contractor also may be required to submit evidence showing that previous partial payments were applied properly. When the borrower and the County Supervisor or District Director have reason to believe that partial payments may not be applied properly, checks may be made jointly to the contractor and persons who furnished materials and labor in connection with the contract.

(v) When partial payments are requested by the contractor and approved by the owner, the amount of the partial payment will be determined by either of the following methods:

(A) Based upon the percentage completed as shown on a recently completed and properly executed Form FmHA 424–12, "Inspection Report," or

(B) Based upon an application for payment containing an estimate of the value of work in place which has been prepared by the contractor and accepted by the borrower and FmHA. When the contract provides for partial payments for materials satisfactorily stored as the site, the application for payment may include these items. Prior to receiving the first partial payment, the contractor should be required to submit a list of major subcontractors and suppliers and a schedule of prices or values of the various phases of the work aggregating the total sum of the contract such as excavation, foundations, framing, roofing, siding, mill work, painting, plumbing, heating, electric wiring, etc., made out in such form as agreed upon by the borrower, FmHA, and the contractor. In applying for payments, the contractor should submit a statement based upon this schedule. See Exhibit A, "Breakdown of Dwelling Cost for Estimating Partial Payments," for guidance in reviewing the contractor's schedule of prices, and also guidance in computing the value of the work in place.

(vi) Final payment.

(A) Final payment of the amount due on the contract or disbursal of the FmHA loan funds where an interim loans was used will be made only upon completion of the entire contract, acceptance of the work by FmHA and the borrower, issuance of any and all final permits and approvals for the use and occupancy of the structure by any applicable state and local governmental authorities, and compliance by the contractor with all terms and conditions of the contract. In the event the work of construction is delayed or interrupted by reason of fire, flood, unusually stormy weather, war, riot, strike, and order, requisition or regulation of any governmental body (excluding delays related to possible defects in the contractor's performance and excluding delays caused by the necessity of securing building permits or any required inspection procedures connected therewith) or other contingencies unforeseen, reasonably unforeseeable and beyond the reasonable control of the contractor, then with the written consent of FmHA the date of completion of the work may be extended by the period of such delay or interruption provided that the contractor shall give the owner and FmHA written notice within seventy-two hours of the occurrence of the event causing the delay or interruption.

(B) Prior to making final payment on the contract when a surety bond is not used or disbursing the FmHA loan funds when an interim loan was used, FmHA will be provided with a Form FmHA 424–9, "Certificate of Contractor's Release", and Form FmHA 424–10, "Release by Claimants," executed by all persons who furnished materials or labor in connection with the contract. The borrower should furnish the contractor with a copy of the "Release by Claimants" form at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(*1*) If such statements cannot be obtained, the loan may be closed provided all the following can be met:

(*i*) Statements to the extent possible are obtained;

(*ii*) The interests of FmHA can be adequately protected and its security position is not impaired;

(*iii*) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims or obtaining a release bond;

(*2*) The State Director may issue a State Supplement which will:

(*i*) Not require the use of Form FmHA 424–10, if, under existing State statutes, the furnishing of labor and materials gives no right to a lien against the property, or

(*ii*) Provide an alternative method to protect against mechanic's and materialmen's liens. In this case, the use of Form FmHA 424–10 is optional.

(b) *Borrower method.* The borrower method means performance of work by or under the direction of the borrower, using one or more of the ways specified in this subsection. Development work may be performed by the borrower method only when; it is not practicable to do the work by the contract method; the borrower possesses or arranges through an approved self-help plan for the necessary skill and managerial ability to complete the work satisfactorily; such work will not interfere seriously with the borrower's farming operation or work schedule, and the County Office caseload will permit a County Supervisor to properly advise the borrower and inspect the work.

(1) *Ways of performing the work.* The borrower will:

(i) Purchase the material and equipment and do the work.

(ii) Utilize lump-sum agreements for (A) minor items or minor portions of items of development, the total cost of which does not exceed $5,000 per agreement, such as labor, material, or labor and material for small service buildings, repair jobs, or land development, or (B) material and equipment which involve a single trade and will be installed by the seller, such as the purchase and installation of heating facilities, electric wiring, wells, painting, liming, or sodding. All agreements will be in writing, however, the County Supervisor may make an exception to this requirement when the agreement involves a relatively small amount.

(2) *Acceptance and storage of material on site.* The County Supervisor will advise the borrower that the acceptance of material as delivered to the site and the proper storage of material will be the borrower's responsibility.

(3) *Payment for work done by the borrower method*—(i) *Payments for labor.* Before the County Supervisor countersigns checks for payment of labor, the borrower must submit a completed Form FmHA 424–11, "Statement of Labor Performed," for each hired worker performing labor during the pay period. Ordinarily,

checks drawn in payment for labor will be made payable to the workers involved. However, under justifiable circumstances, when the borrower has made payment for labor with personal funds and has obtained signatures of the workers on Form FmHA 424–11 as having received payment, the County Supervisor may countersign a check made payable to the borrower for reimbursement for these expenditures. Under no circumstances will the County Supervisor permit loan funds or funds withdrawn from the supervised bank account to be used to pay the borrower for the borrower's own labor or labor performed by any member of the borrower's household.

(ii) *Payments for equipment, materials or lump-sum agreements.* (A) Before the County Supervisor countersigns checks in payment for equipment or materials, the County Supervisor must normally possess an invoice from the seller covering the equipment or materials to be purchased. In case an invoice from the seller is not available at the time the check is issued, an itemized statement of the equipment or materials to be purchased may be substituted for such an invoice until a paid invoice from the seller is furnished the County Supervisor, at which time the itemized statement may be destroyed.

(B) When an invoice from the seller is available at the time the check is drawn, there will be indicated on the check the invoice number and, if necessary, the purpose of the expenditure may also be shown. If the invoice is unnumbered, the invoice date will be inserted on the check.

(C) The check number and date of payment will be indicated on each paid Form FmHA 424–11, invoice, itemized statement for materials, and written lump-sum agreement.

(D) Ordinarily, checks drawn in payment for equipment or materials will be made payable to the seller. Under justifiable circumstances, when the borrower has made payment for equipment or materials with personal funds and furnished a paid invoice from the seller, the County Supervisor may countersign a check made payable to the borrower, for reimbursement for these expenses.

(E) When an invoice includes equipment or materials for more than one item of development, the appropriate part of the cost to be charged against each item of development will be indicated on the invoice by the borrower, with the assistance of the County Supervisor.

(F) Payment made under lump-sum agreements will be made only when all items of equipment and materials have been furnished, labor has been performed as agreed upon, and the work has been accepted by the borrower and FmHA.

(G) Each paid Form FmHA 424–11, invoice, itemized statement for material, and written lump-sum agreement will be given to the borrower as provided in Exhibit A to FmHA Instruction 2033–A (available in any FmHA Office).

(c) *Mutual self-help method.* 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 Exhibit A of FmHA Instruction 444.1, (available in any FmHA office). The ways of doing the work, buying materials, and contracting method for special services are like those used for the borrower method. Materials can be bought jointly by the group of families, but payments will be made individually by each family. In the case of RH loans to families being assisted by self-help technical assistance (TA) grants in accordance with Subpart I of Part 1933 of this chapter, the County Supervisor may make payment for material and necessary contract work from the RH individual loan accounts directly to the TA grantee, provided the District Director determines that:

(1) The grantee acts in the same capacity as would a construction manager in the group purchase of material and services.

(2) The grantee has an adequate bookkeeping system approved by the District Director to assure that funds of each RH account are properly distributed and maintained.

(3) The grantee receives no compensation in the way of profit or overhead for this service, and all discounts and rebates received in connection with the purchase of materials or services are passed on to the participating families.

(4) The TA grantee must have records showing that the cost of the materials and services were prorated to each borrower's account in relation to the actual material and service usage of each borrower.

(d) *Owner-builder method.* This method of construction applies only to RRH loans made under Subpart D of Part 1822 of this Chapter (FmHA Instruction 444.5). Regulations governing this method are found at § 1924.13(e)(2).

**§ 1924.7 [Reserved]**

**§ 1924.8 Development work for buildings manufactured offsite.**

(a) Exhibit B of this subpart applies to all loans involving dwelling units manufactured offsite.

(b) Complete drawings and specifications will be required as prescribed in Exhibit C of this Subpart. Each set of drawings will contain the design of the foundation system required for the soil and slope conditions of the particular site on which the manufactured house is to be placed.

(c) The manufacturer will provide a certification (Exhibit B of this Subpart), stating that the building has been built substantially in accordance with the drawings and specifications. The builder will also certify on this same certification that the offsite work is to comply with drawings, specifications, and HUD Minimum Property Standards (See Exhibit B, Attachment 3).

(d) In every case, the County Supervisor or District Director will make field inspections of the foundation, (Stage 1) of the building when it is erected or placed on the foundation, (Stage 2) and of the final completed onsite development (Stage 3). The second stage inspection should be made during the time and in no case later than 2 working days after the crews are on the site and the house is being erected or placed on the foundation. This second stage field inspection will be made to determine compliance with the accepted drawings and specifications.

(e) Periodic plant inspections may be performed by the FmHA employee responsible for such inspections in the area in which the manufacturing plant or material supply yard is located.

(1) Inspections will be made in the plants if the type construction method used could restrict adequate inspections on the building site.

(2) Plant inspections will be made as often as necessary. However, after initial inspection and acceptance of the building submitted, inspection should be made only when it appears advisable to ascertain the performance and continuing stability of accepted materials and construction.

(f) Only one contract will be accepted for the completed house on the site owned or to be bought by the borrower. The manufacturer of the house or the manufacturer's agent may be the prime contractor for delivery and erection of the house on the site or a builder may contract with the borrower for the complete house in place on the site. Such contracts should provide that payments will be made only for work in place of the borrower's site.

(g) Payments for structures manufactured offsite will be made in accordance with the terms of the contract and in compliance with § 1924.6(a)(12) of this Subpart.

**§ 1924.9 Inspection of development work.**

The following policies will govern the inspection of all development work.

(a) *Responsibility for inspection.* The County Supervisor or District Director, accompanied by the borrower when practicable, will make final inspection of all development work and periodic inspections as appropriate to protect the security interest of the government. In this respect, inspections other than final inspections, may be conducted by other qualified personnel as authorized under agreements executed by or authorized by the National Office. The borrower will be responsible for making inspections necessary to protect the borrower's interest. FmHA's inspections are not to assure the borrower that the house is built in accordance with the plans and specifications. The inspections create or imply no duty or obligation to the particular borrower but are, rather, for the dual purposes of determining that FmHA has adequate security for its loan and enabling FmHA to determine that FmHA is working toward achieving the statutory goal of providing adequate housing. On jobs involving difficult technical problems, the County Supervisor may request the assistance of the State Office. Qualified technicians from SCS or the State University Cooperative Extension Service may be requested to assist on any such jobs.

(b) *Frequency of inspections.* The County Supervisor or District Director will inspect development work as frequently as necessary to assure that construction and land development conforms with the drawings and specifications. The final inspection will be made at the earliest possible date after completion of the planned development. When several major items of development are involved, final inspection will be made upon completion of each item.

(1) For new buildings and additions to existing buildings, inspections will be made at the following stages of construction and at such other stages of construction as determined by the County Supervisor or District Director except as modified by paragraph (b)(3) of this section.

(i) *Stage 1.* Customarily, the initial inspection in construction cases is made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. However, when it is not practicable to make the initial inspection prior to or during the placement of concrete, the County Supervisor or District Director will make the initial inspection as soon as possible after the placement of concrete and before any backfill is in place.

(ii) *Stage 2.* The Stage 2 inspection will be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed. Customarily, this is prior to installation of brick veneer or any interior finish which would include lath, wallboard and finish flooring.

(iii) *Stage 3.* The final inspection will be made when all on-site and off-site development of the structure has been completed and the structure is ready for occupancy or its intended use.

(2) For rehabilitation of existing buildings, inspections will be made in accordance with paragraphs (b)(1)(ii) and (iii) of this section, and at such other stages of construction to assure that construction is being performed in a professional manner and in accordance with the FmHA approved drawings and specifications.

(3) For cases when the County Supervisor determines that the property will be covered by an insured 10 year warranty plan, only the final inspection is required. However, for this inspection exception to apply:

(i) If the dwelling is to be build by contract for an FmHA borrower, or an FmHA conditional commitment has been issued, a copy of the warranty plan must be submitted to the County Supervisor before construction begins.

(ii) If the dwelling was built without a contract for an FmHA borrower or an FmHA conditional commitment, a copy of the dwelling plans and specifications and a copy of the warranty plan must be submitted to the County Supervisor before the property is appraised by FmHA.

(4) Arrangements should be made to have the borrower join the County Supervisor or the District Director in making periodic inspections as often as necessary to provide a mutual understanding with regard to the progress and performance of the work.

(5) The borrower should make enough periodic visits to the site to be familiar with the progress and performance of the work, in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the contractor with a copy to the County Supervisor or District Director responsible for servicing the type of loan or grant involved.

(6) The borrower should, when practical, join the County Supervisor or District Director in making all final inspections.

(7) When irrigation equipment and materials are to be purchased and installed, a performance test under actual operating conditions by the person or firm making the installation should be required before final acceptance is made. The test should be conducted in the presence of the borrower, a qualified technician, and, when practicable, the County Supervisor. If the County Supervisor is not present at the performance test, the County Supervisor should request the technician to furnish a report as to whether or not the installation meets the requirements of the plans and specifications.

(8) For irrigation and drainage construction or any dwelling construction where part or all of the work will be buried or backfilled, interim inspections should be made at such stages of construction that compliance with plans and specifications can be determined.

(c) *Recording inspections and correction of deficiencies.* All periodic and final inspections made by the County Supervisor or District Director will be recorded on Form FmHA 424–12 in accordance with the FMI for the form. The County Supervisor or District Director will be responsible for following up on the correction of deficiencies reported on Form FmHA 424–12. When an architect/engineer is providing services on a project, the Dictrict Director should notify the architect/engineer immediately of any fault or defect observed in the work or of any nonconformance with the contract document. If the borrower or the contractor refuses to correct the deficiencies, the District Director will report the facts to the State Director who will determine the action to be taken. No inspection will be recorded as a final inspection until all deficiencies or nonconforming conditions have been corrected.

(d) *Warranty period.* Form FmHA 424–19 or an acceptable insured 10-year warranty plan on RH loans for new construction will be provided by the contractor or warrantor. When an acceptable insured 10-year warranty has been provided, the County Supervisor will assist the borrower to the extent necessary under the provisions of the warranty and Subpart F of Part 1924 of this chapter. When the contractor provides the warranty on Form FmHA 424–19, the County Supervisor or the

District Director will take the following action prior to the expiration of the first year of the warranty period:

(1) As soon as the warranty has been executed, the follow-up date for sending Form FmHA 424–21, "Notice of Expiration of Builder's Warranty," will be posted to the "Servicing and Supervision" section of the Management System card.

(2) Form FmHA 424–21 is provided for use in notifying the borrower of the expiration date of the Builder's Warranty. This letter will be mailed to the borrower early in the second month preceding the expiration date of the warranty period.

(3) If the County Supervisor or District Director does not hear from the borrower within 30 days, it can reasonably be assumed that no complaint exists or that any complaint has been satisfied, unless information to the contrary has been received.

(4) If the borrower notifies FmHA that any complaint has not been satisfied, an on-site inspection shall be made as early as possible, but not later than one month preceding the expiration date of the warranty period. The results of the inspection visit will be recorded on Form FmHA 424–12. If the borrower's complaints are justified, the case should be handled in accordance with Subpart F of Part 1924 of this chapter.

(e) *Acceptance by responsible public authority.* When local (city, county, State, or other public authority) codes and ordinances require inspections, final acceptance by the local authority having jurisdiction will be required prior to final inspection or acceptance by FmHA.

(f) *Acceptance by project architect.* If architectural services pursuant to § 1924.13(a) have been obtained, final acceptance by the project architect pursuant to § 1924.13(a)(5)(v) will be required prior to acceptance by FmHA.

**§ 1924.10 Making changes in the development plan.**

Changes in the planned development may be made at the request of the borrower in accordance with this section.

(a) *Authority of the County Supervisor.* The County Supervisor is authorized to approve changes in the planned development involving loans and grants within the County Supervisor's approval authority provided:

(1) The change is for a purpose for which loan funds for the type of loan involved can be used.

(2) Sufficient funds are deposited in the borrower's supervised bank account or with the interim lender, as appropriate, to cover the contemplated changes when the change involves additional funds to be furnished by the borrower.

(3) The change will not adversely affect the soundness of the operation or FmHA's security. If uncertain as to the probable effect the change would have on the soundness of the operation or FmHA security, the County Supervisor will obtain advice from the District Director on whether to approve the change.

(4) If a surety bond has been provided on the full amount of the construction contract, the aggregate amount of all contract change orders on Form FmHA 424–7 or other acceptable form will not exceed 20 percent of the original contract amount. Change orders for contracts on which a surety bond has been provided which increases the original contract amount by more than 20 percent may only be approved if additional surety is provided in the full revised amount of the contract. For purposes of this paragraph, letters of credit and deposits are not considered surety.

(5) Change orders for contracts on which letters of credit or deposits have been provided on the full amount of the contract which will increase the original contract amount are approved only if additional letters of credit or deposits are provided in the full revised amount of the contract.

(b) *Authority of the District Director.* The District Director is authorized to approve changes in the development planned with RRH, RCH, and RHS loans and LH loans and grants within the District Director's approval authority, provided the conditions in § 1924.10(a) have been met. For such loans in excess of the District Director's approval authority, the borrower's request with the District Director's recommendation will be forwarded to the State Director for consideration.

(c) *Recording changes in the planned development.* (1) Changes should be accomplished only after FmHA approval. Changes will not be included in payment requests until approved by the borrower; the contractor, if applicable; the architect/engineer, if applicable; and the FmHA loan approval official. Examples of changes requiring documentation are:

(i) Any changes in labor and materials and their respective costs.

(ii) Changes in facility design.

(iii) Any decrease or increase in unit-price quantities based on final measurements that are different from those shown in the bidding schedule.

(iv) Any increase or decrease in the time to complete the project.

(2) All changes shall be recorded in chronological order as follows:

(i) Contract method. Changes shall be numbered in sequence as they occur using Form FmHA 424–7 with necessary attachments.

(ii) Borrower method. An increase or decrease in the cash cost, extensions of time, transfer of funds between items, or an addition or deletion of items of development, will be summarized on the front of Form FmHA 424–1 by striking through the original figures on items and writing in the changes. Changes made in the "Development Plan," in the working drawings, or in the plans and specifications will be dated and initialed by all parties.

(iii) Mutual self-help method. (See paragraph (c)(2)(ii) of this section)

(iv) Owner-builder method. (see paragraph (c)(2) (i) of this section)

**§ 1924.11 District Director's review of incomplete development.**

During monthly District Office work organization meetings and during regular visits to the County Office, the District Director will review the progress that is being made in completing development financed with loans within the District Director's and County Supervisor's responsibility.

(a) Once each year the District Director will make a comprehensive review of all development work not completed within the time scheduled. For incomplete development financed with loan or grant funds within the responsibility of the District Director, the District Director will take the necessary actions to assure that the borrower or grantee completes the planned development. For incomplete development financed with loan or grant funds within the responsibility of the County Supervisor, the District Director will give the necessary direction to the County Supervisor to assure completion of the work. In connection with these responsibilities, the District Director will consider:

(1) The current farm and home operations with respect to the need for the development as originally planned.

(2) Revisions to the development plan.

(3) Funds remaining in the supervised bank account.

(4) Need for additional funds.

(5) Personal funds that could be furnished by the borrower.

(6) Estimated completion dates.

(7) The borrower's attitude with respect to completing the development.

(b) After a complete review of the status of development in both the District and County Offices has been made, the District Director will make a written report to the State Director which will include observations and recommendations regarding incomplete development. The report may be included in the District Director's regular report, and will include:

(1) The number of cases in which borrowers have not completed their development within 9, 15 or 24 months when authorized, and also the number of cases in which funds have been exhausted and the work is incomplete.

(2) The number of borrowers who have not completed their development within three years from the loan closing, and indicate the action that was taken in each such case.

(c) If the borrower has not completed development work within three years after the date of loan closing and the District Director has determined that the borrower cannot or will not complete the development, the District Director will so indicate on Form FmHA 424-1, "Development Plan", and request the State Director to withdraw, for application on the loan, any unused development funds remaining in the borrower's supervised bank account, if the borrower will not sign a check for a refund to the loan account.

**§1924.12 [Reserved]**

**§1924.13 Supplemental requirements for more complex construction.**

This Section includes additional provisions that apply to planning and conduct of construction work on all multiple family housing projects and other projects that are more extensive in scope and more complex in nature than individual housing units or farm buildings. This section will apply in addition to all non-inconsistent requirements contained elsewhere in this Subpart.

(a) *Architectural services.* Complete architectural services, as defined in § 1924.4(n)(1) are recommended on all projects. They are required for projects involving an LH grant and for all loans for RRH, RCH, and LH projects consisting of more than 4 units unless prior consent to making an exception to the requirements for complete architectural services is obtained from the National Office. If the applicant or contractor is an architect or organization with architectural capability, the applicant must, nevertheless, hire an independent qualified architect or architectural firm to inspect the construction work and perform other needed services during the construction and warranty phases.

(1) *Exceptions.* Any request for National Office consent to an exception being made for complete architectural services should include the proposed drawings and specifications, method of providing specific services, the comments and recommendations of the FmHA State Architect, and any other pertinent information. The State Director must determine that any services for which an exception is requested can be performed by qualified State or District Office staff members.

(2) *Selecting the architect.* The applicant is responsible for selecting the architect. The District Director with the advice of the State Architect/Engineer (a/e) should discuss with the applicant the selection of the architect for the job as early as possible to assist in the site selection and participate in early consultations regarding project scope and design.

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA financing is not involved. The fee should cover only the architectural services rendered by the architect. Fees for special services rendered by architects, such as the packaging of the loan application or additional non-architectural services, will not be authorized to be paid with loan funds.

(4) *Agreement between borrower and architect.* The borrower and the architect will execute a written agreement. The agreement must provide:

(i) The services listed in paragraph (a)(5) of this section.

(ii) The amount of the fee and how it will be determined and paid.

(iii) That the agreement and any amendments to the agreement shall not be in full force and effect until approved in writing by the State Director or the State Director's delegate, and it will contain the following provision:

The Farmers Home Administration as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby approves the form, content and the execution of this agreement.

Date ____________

____________

FmHA Approval Official

____________

Title

(5) *Specific services.* Architectural services will include six consecutive phases as follows:

(i) *Schematic design phase.* The architect will:

(A) Consult with the applicant to obtain available information pertinent to the project requirements.

(B) Consult with FmHA State Architect/Engineer about FmHA requirements and procedures.

(C) Assist in preparing the project design after analyzing engineering and survey data on the site selected by the applicant.

(D) Prepare schematic design studies consisting of drawings and other documents illustrating the scale and relationship of project components for the applicant's approval.

(E) Submit estimates of current development costs based on current area, volume, or other unit costs.

(F) When the applicant and FmHA have accepted the schematic design studies and estimated development costs, the project architect may be authorized to proceed with the next phase.

(ii) *Design development phase.* The architect will:

(A) Prepare the design development exhibits from the accepted schematic design studies for approval by the applicant. These exhibits should consist of drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical, and electrical systems, materials, and other essentials as appropriate.

(B) Submit a further statement of probable construction cost.

(C) Obtain applicant and FmHA approval of drawings, specifications, and authorization to proceed with next phase.

(iii) *Construction documents phase.* The architect will:

(A) Prepare the working drawings and specifications from the approved design development drawings and set forth in detail the requirements for the construction of the entire project in accordance with the applicable regulations and codes; for example, necessary bidding information, assistance in preparing bidding forms, conditions of the construction contract, and the form of agreement between applicant/owner and contractor.

(B) Submit a final and more comprehensive statement of probable development cost. It should show a breakdown of the estimated total development cost of the project and the various trades in enough detail for an adequate review.

(C) Obtain the acceptance of FmHA and the applicant for contract documents, including approval of the final drawings and specifications and authorization to proceed.

(D) Discuss with the applicant various items as they develop.

(iv) *Bidding or negotiation phase.* The architect will, as appropriate, for a bidded or negotiated contract:

(A) Assist in review and selection of bidders and submission of contract documents to selected bidders.

(B) Assist in the interpretation of drawings and specifications, and other contract documents.

(C) Receive and tabulate all bids.

(D) Review the bids and the negotiated proposals and assist in the award and preparation of construction contracts.

(v) *Construction phase.* This phase includes the administration of the construction contract. It will commence with the award of the construction contract and end when the borrower makes final payment to the contractor. The architect will:

(A) Advise and consult with the borrower (or the borrower's representative) and issue the borrower's instructions to the contractor.

(B) Prepare change orders.

(C) Keep construction accounts and work as the general administrator of the project during construction.

(D) Interpret the contract documents and have the authority to reject all work and materials which do not comply.

(E) Review and approve shop drawings, samples, and other submissions of the contractor for conformance with the design concept and for compliance with the contract documents.

(F) Conduct periodic inspections of all phases of construction to determine compliance with the contract documents and certify as to the amount of work that is in place and materials suitably stored on site for partial payment estimates. These inspections will be augmented, when necessary, by inspections performed by structural, mechanical, and electrical representatives. Periodic inspections should be made as frequently as is necessary to verify that the work conforms with the intent of the contract documents and that a high quality of workmanship is maintained. The State Director may require a full-time project representative on projects with a total development cost of $750,000 or more, when in the opinion of the State Director there is a need for such representative, and the State Director states the reasons for such need to the borrower.

(G) Determine, based on the inspections, the dates of substantial completion and final completion; receive on the borrower's behalf all written guarantees and related documents assembled by the contractor; and issue a final certificate for payment.

(vi) *Warranty phase.* The architect will advise and consult with the borrower, as the borrower's representative, about items to be corrected within the warranty period. The architect will accompany the FmHA representative during the inspection required one month prior to expiration of the warranty period.

(b) *Other professional services.* The State Director, on the recommendation of the State Architect/Engineer, may request that additional professional services be provided.

(1) Professional services would typically include soils engineering, structural engineering, civil engineering, surveying, land planning, or professional cost estimation or certification. Fees for these services may be paid directly by the borrower or by the architect as reimbursable expenses.

(2) When a project representative is utilized, unless otherwise agreed, the representative will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the project representative to the applicant and to FmHA for acceptance in writing. If the applicant provided the project representative, the applicant must submit a resume of the representative's qualifications to the project architect/engineer and FmHA for acceptance in writing, prior to the preconstruction conference. In those cases where the State Director, with concurrence of the National Office, determines that the interest of the government will not be adequately protected by the above selection process, FmHA reserves the right to select a project representative to be paid by the owner. The project representative will attend the preconstruction conference where duties and responsibilites will be fully discussed. The project representative will work under the general supervision of the architect/engineer. The project representative will maintain a daily diary in accordance with the following:

(i) The diary shall be maintained in a hard-bound book.

(ii) The diary book shall have all pages numbered and all entries in ink.

(iii) All entries shall be on a daily basis, beginning with the date and weather conditions.

(iv) Daily entries shall include daily work performed, number of men and equipment used in the performance of the work, and all significant happenings during the day.

(v) The daily diary shall be made available to FmHA personnel and will be reviewed during project inspections.

(vi) The project representative's daily diary will become the property of the owner after the project is accepted and final payments are made.

(c) *Drawings.* The types and kinds of drawings should be in accordance with Exhibit C of this subpart and Subpart D of Part 1822 of this chapter (FmHA Instruction 444.5).

(1) The drawings must be clear, accurate, and with adequate dimensions and should be of sufficient scale for estimating purposes.

(2) Construction sections and large-scale details sufficient for accurate bidding and for the purpose of correlating all parts of the work should be a part of the general drawings. This is particularly important where the size of a project makes necessary the preparation of the general drawings at a scale of ⅛ inch equals 1 foot or less.

(3) Mechanical and electrical work should be shown on separate plans.

(4) Schedules should be provided for doors, windows, finishes, electrical fixtures, finish hardware, and any other specialty items necessary to clarify drawings.

(d) *Specifications.* Trade-type specifications (specifications divided into sections for various trades) should be used. The specifications should be complete, clear, and concise, with adequate description of the various classes of work shown under the proper sections and headings.

(e) *Methods of administering construction.* Projects involving a total development cost of less than $100,000 which do not include an LH grant may, with the approval of the State Director, follow the contract procedure stated in § 1924.6(a) without modification. Construction of all other projects, however, will be administered by the contract method or owner-builder method as set forth in this section.

(1) *Contract method.* This method of development will be used for all complex construction except in cases where owner-builder method is authorized. Development under this method is done in accordance with § 1924.6(a) except as modified by this paragraph. All construction work will be completed under one written construction contract.

(i) *Competitive bidding methods.* (A) All construction contracts must be awarded on the basis of competitive bidding unless an exception is granted in accordance with paragraph (e)(1)(vii) of this section thereby permitting contract negotiation. The applicant's architect should prepare the bidding documents. Public notice must be given inviting all interested bidders to submit a bid. Prospective bidders may be contacted asking for their bids; however, public notice is necessary so that all local contractors have the opportunity to submit bids.

(B) A bid bond is required from each bidder in the amount of five percent of the bid price as assurance that the bidder will, upon acceptance of the bid, execute the required contract documents within the time specified.

(C) The construction contract will be awarded based on the contract cost, and all conditions listed in the "Invitation to Bid."

(D) If advertising does not provide a satisfactory bid in the opinion of the applicant and FmHA, the applicant shall reject all bids and will then be free to negotiate with bidders or anyone else to obtain a satisfactory contract.

(ii) *Contract documents.* Contract documents will conform with recognized professional practices as prescribed in this paragraph. Such contract documents will contain substantially the following:

Item I—Invitation for Bids (Form FmHA 424-5).
Item II—Information for Bidders.
Item III—Bid.
Item IV—Bid Bond.
Item V—Agreement (Construction Contract).
Item VI—Compliance Statement (Form FmHA 400-6).
Item VII—General Conditions.
Item VIII—Supplemental General Conditions.
Item IX—Payment Bond (Exhibit F of this subpart).
Item X—Performance Bond (Exhibit G of this subpart).
Item XI—Notice of Award.
Item XII—Notice to Proceed.
Item XIII—Drawings and Specifications.
Item XIV—Addenda.
Item XV—Contract Change Order (Form FmHA 424-7).
Item XVI—Labor Standards Provisions (Exhibit A to Subpart D of Part 1901 of this chapter, where applicable).
Item XVII—Monthly Employment Utilization Report (Standard Form 257).
Item XVIII—Partial Payment Estimate (Form FmHA 424-18).
Item XIX—Builder's Warranty (Form FmHA 424-19).

(A) Substitution of the term "architect" for "engineer" will be necessary on some of the forms. Other modifications may be necessary in some cases to conform with the nature and extent of the project. All such contract documents and related items will be approved by the State Director, with the assistance of Office of the General Counsel, (OGC) prior to the release of invitations to bid.

(B) Items listed as I through IV and item XI above may be omitted when an exception of the competitive bidding requirement is granted in accordance with paragraph 1924.13(e)(1)(vii), thereby permitting a negotiated contract.

(C) All negotiated contracts shall include a provision to the effect that the borrower, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions.

(D) Liquidated damages will be included in all contracts. The liquidated damage amount must be reasonable and represent the best estimate possible of how much interest or other costs will accrue on the loan, and also represent any loss of rent or other income which would result from a delay in the completion of the project beyond the estimated completion date.

(E) All contracts shall include a provision for compliance with the Copeland "Anti-kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act prohibits anyone from inducing any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

(F) All contracts will contain a certification by both the applicant and the contractor indicating that there is not now nor will there be an identity of interest between or among the contractor, applicant, architect, engineer, attorney, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries unless specifically identified to FmHA in writing prior to the award of the contract. All contracts must also indicate that when any identity of interest exists or comes into being, the contractor agrees to provide certification as to the actual cost of the work performed under the construction contract and to have all construction records audited by an independent Certified Public Accountant (CPA) or Licensed Public Accountant (LPA) (licensed prior to December 31, 1970) who will provide an unqualified opinion as to the actual cost of construction.

(C) All contracts on any form other than Form FmHA 424-6, must contain the language of clause (D) of Form FmHA 424-6, which is available in all FmHA offices. The language of clause (D) of Form FmHA 424-6 sets forth the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity required by Executive Order 11246, the Equal Opportunity clause published at 41 CFR 60-1.4(a) and (b), and the Standard Federal Equal Employment Opportunity Construction Contract Specifications required by Executive Order 11246. For contract forms other than Form FmHA 424-6, Form AD 767, "Equal Employment Opportunity Contract Compliance Notices," which can be obtained from the Finance Office, should be attached and made a part of the contract.

(H) All contracts will contain a provision that they are not in full force and effect until they have been approved by the State Director or the State Director's delegate, in writing. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegate will approve the contract form, content, and execution by including the following paragraph at the end of the contract:

The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby approves the form, content, and execution of this contract.

Date ______________________

______________________
FmHA Approval Official

______________________
Title

(I) The requirements of § 1924.6 (a)(11)(iv) apply to all contracts or subcontracts in excess of $10,000.

(iii) *Surety.* When multiple advances of loan or grant funds are utilized, surety that guarantees both payment and performance in the full amount of the contract will be provided in accordance with § 1924.6(a)(3)(ii). Exceptions to the surety requirements shall be governed by the following:

(A) In accordance with the guidance and recommendations of OMB Circulars A-102 and A-110, exceptions to the surety requirements of § 1924.6(a)(3)(ii) will not be granted for nonprofit organization or public body applicants.

(B) For loans or grants to applicants other than nonprofit organizations or public bodies that are within the State Director's approval authority, the State Director may, with the approval of the developer, grant exceptions to the surety requirements in accordance with the provisions of § 1924.6(a)(3)(iii). Before granting such an exception, however, the State Director should obtain the following information from the proposed contractor in order to fully evaluate the experience and capabilities of the contractor:

(*1*) A resume indicating the contractor's history, ability, and experience.

(*2*) A current, dated, and signed financial statement indicating the payment status of the contractor's accounts and any contingent liabilities that may exist.

(*3*) A credit report (obtained at no expense to FmHA) attesting to the contractor's credit standing.

(*4*) A listing of trade references that could be contacted to substantiate the contractor's experience and good standing.

(*5*) Statements from owners for whom the contractor has done similar work, indicating the scope of the work and the owner's evaluation of the contractor's performance.

(C) For loans or grants to applicants other than nonprofit organizations or public bodies that are in excess of the State Director's approval authority, the State Director may request National Office authorization to grant one of the exceptions to the surety requirements as indicated in § 1924.6(a)(3)(iii). The following information must be submitted with the request to the National Office:

(*1*) An explanation of why interim financing is not available.

(*2*) An explanation of why the proposed contractor cannot obtain surety bonds meeting the requirements of § 1924.6(a)(3)(ii).

(*3*) The information listed in paragraph (e)(1)(iii)(B) of this section.

(*4*) The drawings and specifications for the proposed project, together with the comments of the State architect/ engineer.

(*5*) The applicant's written request for an exception.

(*6*) An explanation of why the requirements of § 1924.6(a)(3)(iii) (A) or (B) cannot be met in those cases where the State Director requests authorization to grant an exception as indicated in § 1924.6(a)(3)(iii)(C). When such a request is made, the documentation required of the contractor under that provision must also be forwarded.

(*7*) The State Director's recommendation.

(D) Adequate steps will be taken to protect the interests of the borrower and the government in accordance with the payment provisions of § 1924.6(a)(12)(i) of this Subpart and any alternative as outlined in § 1924.6(a)(3)(iii)(C).

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4(h), the contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety or cost certification fee will be included in the proposed contract amount. Form FmHA 1924-13, "Estimate and Certificate of Actual Cost" which is available in all FmHA offices, may be used for this purpose.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4(h), the contractor and any subcontractor, material supplier, or equipment lessor sharing that identity must provide certification as to the actual cost of the work performed in connection with the construction contract and all construction records must also be audited by an independent CPA or LPA who will provide an unqualified opinion as to the actual cost of construction, except as provided in § 1924.13(e)(2)(vii).

(A) Prior to the start of construction, the contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit the ledger-type accounting system that the contractor, subcontractor, material supplier, or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, it must allow for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with paragraph (e)(1)(iv) of this section.

(B) The CPA or LPA will audit the books, accounts, and records of the contractor (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction contract. Upon completion of construction and prior to final payment, the CPA or LPA will provide an unqualified opinion concerning the actual cost. The CPA or LPA must also certify that the audit has been completed in accordance with generally accepted auditing standards, that to the best of the CPA or LPA's knowledge and belief the actual cost of construction performed under the contract is accurate and correct as represented, and that the CPA or LPA has no identity of interest in the applicant, contractor, architect, engineer, attorney, subcontractors, material suppliers, or equipment lessors. The following format is suggested for this certification and it contains the minimum representations acceptable to FmHA:

We have examined the books and records of (Contractor) related to the development of the (project name and case number).

Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying documents and Form FmHA 1924-13 which is available in all FmHA offices, present fairly the actual cost, in the amount of $—, of the (project name). It conforms with generally accepted accounting principles and gives effect to the instructions issued by FmHA for the recognition of such costs.

Amounts paid and to be paid are shown as of the close of business ———, 19—.

We certify that we have no financial interest in the Contractor or borrower other than in the practice of our profession.

FmHA reserves the right to determine, upon receipt, whether or not the certified statement of cost is satisfactory to FmHA.

(C) Prior to final payment to anyone required to cost certify, a trade-item breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA. Form FmHA 1924-13 is the form of comparative breakdown that should be used, and contains the certifications required of the applicant and contractor prior to final payment. Fees for overhead (general requirements and overhead) and profit exceeding the amounts shown on the contract cost breakdown(s) provided in accordance with paragraph (e)(1)(iv) of this section may not be paid to any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to final payment to the contractor if necessary to assure that the fees shown in the certificate of actual cost do not exceed those shown in the contract cost breakdown.

(vi) *Method of payments.* Partial payments may be requested in accordance with the terms of the FmHA approved construction contract on Form FmHA 424-18, "Partial Payment Estimate," or other professionally recognized form that contains the architect's certification, approval of the owner, and conditional acceptance of FmHA as shown on the reverse of Form FmHA 424-18.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit I to Subpart D of Part 1822 of this chapter (FmHA Instruction 444.5) shall be used to inform the interim lender that FmHA will not close its loan until the project is substantially complete, ready for occupancy, evidence is furnished indicating that all bills have been paid or will be paid at loan closing for work completed on the project, all inspections have been completed and all required approvals have been obtained from municipal and governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates approved by the applicant and accepted by FmHA, the interim lender may advance construction funds in accordance with the payment terms of the contract. It is suggested that partial payments not exceed 90 percent of the value of work in place and materials suitably stored on site.

(B) When interim financing is not available, payments will be made in accordance with § 1924.6(a)(12).

(vii) *Exception of competitive bidding.*—(A) *For nonprofit organizations.* All construction contracts for projects to be owned by nonprofit organizations should be awarded on the basis of competitive bidding. However, in exceptional cases and only when justified, the State Director may make an exception to competitive bidding for nonprofit organization applicants, providing all of the following conditions are met:

(*1*) The applicant provides a copy of a duly authorized resolution by its governing body requesting FmHA to permit awarding the construction contract without formal bidding. The reasons for such a request must be fully documented.

(*2*) The State Director determines that the proposed cost of the development compares favorably with the cost of similar projects that have been financed in the area and that the State Director is assured that competitive bidding would not result in a lower price.

(*3*) The proposed contractor must provide surety bonds meeting the requirements of § 1924.6(a)(3)(ii) and must be experienced in construction of similar size, scope, and complexity, and must be recognized as a reliable builder. The State Director must determine that there is no conflict of interest in the award of the contract to the proposed contractor.

(*4*) The development work meets all requirements of this Subpart.

(*5*) The requirements of paragraph (e)(1) (ii), (iii), (iv), and (v) of this section are met.

(B) *For public bodies.* While the construction contract should be awarded on the basis of competitive bidding, in exceptional cases, and only when justified, the State Director may make an exception to the competitive bidding for a public body applicant provided:

(*1*) Public bodies are permitted by State and local law to negotiate a construction contract.

(*2*) The conditions stated in § 1924.13(e)(1)(vii)(A) are met.

(C) *For applicants other than nonprofit organizations and public bodies.* When State and local laws permit, an applicant other than a nonprofit organization or public body may negotitate a construction contract provided the State Director or loan approval official determines and documentation shows that:

(*1*) The contract price is competitive with other projects similar in construction and design being built in the area.

(*2*) The proposed contractor is experienced in construction of similar size, scope, and complexity, and is recognized as a reliable builder.

(*3*) The development work meets all requirements of this Subpart.

(*4*) The requirements of paragraphs (e)(1) (ii), (iii), (iv), and (v) of this section are met.

(viii) *Exception to contract method—Public Body.* With the approval of the National Office, an exception to the requirement for using contract method construction may be granted to a public body under the following circumstances:

(A) The loan or grant is for repair or rehabilitation of existing facilities and it is not practicable to perform all work by the contract method.

(B) The applicant has the managerial ability and qualified employees necessary to complete the work successfully.

(C) The applicant submits a written request to the District Director indicating:

(*1*) The scope of work and construction timetable;

(*2*) What phases of work can be contracted and which cannot;

(*3*) Why is it not practicable to contract all phases;

(*4*) Management ability and employee qualifications for performing the work;

(*5*) Proposed method of fund control and frequency of payments;

(*6*) How changes in scope of work and construction timetable will be approved; and

(*7*) Method for certifying progress and requesting payment.

The request, recommendations of the District Director and State Office officials, and the application file will be sent to the National Office.

(2) *Owner-builder method.* This method of development is used only when requested by profit or limited profit RRH applicants when the applicant or any of its controlling principals (such as stockholders, members, partners other than limited partners, directors, or officers), are general contractors by profession, and will serve as the builder of the project without a written construction contract. The State Director may make an exception to the contract method of construction and authorize proceeding by the owner-builder method of construction in accordance with the provisions of this section if the amount of the loan(s) does not exceed the State Director's approval authority. For projects over the State Director's authority, prior written consent of the National Office is required. In such cases, the drawings, specifications, cost estimates, copy of the State Architect/Engineer's review and detailed information on the applicant's qualifications will be submitted to the National Office along with the State Director's recommendations.

(i) The applicant's request to construct a project by the owner-builder method of construction shall be in the form of a letter giving specific and detailed information concerning the owner-builder's proposal, and the qualifications and past experience of the owner-builder. The following information must be included with the request:

(A) A resume indicating the owner-builder's history, ability, and experience.

(B) Dated and signed financial statements (including balance sheets and statements of income and expense) from current and prior years indicating the payment status of the owner-builder's accounts and any contingent liabilities that may exist.

(C) A written, dated, and signed statement agreeing to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(D) A credit report (obtained at no expense to FmHA) attesting to the owner-builder's credit standing.

(E) A listing of trade references that could be contacted to substantiate the owner-builder's experience and good standing.

(F) Statements from other persons for whom the owner-builder has done similar work, indicating the scope of the work and that person's evaluation of the owner-builder's performance.

(G) A current, dated, and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the owner-builder. Form FmHA 1924–13 will be used for this purpose. If cost certification or cost estimation services are required by FmHA, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier, or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(h) must also provide a trade-item cost breakdown of the proposed amount.

(H) An example of the ledger-type accounting system that the owner-builder and/or the owner-builder's CPA or LPA proposes to set up and use in maintaining a running record of the actual cost of the project. In order to be acceptable, it must allow for a trade item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with paragraph (e)(2)(i)(G) of this section.

(I) A written, dated, and signed statement agreeing to permit U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, and records which are directly pertinent to the specific Federal program for the purpose of making audit, examination, exerpts, and transcriptions.

(ii) In order to waive the contract method of construction and proceed with the owner-builder method of construction, the State Director must determine that the following conditions exist:

(A) The applicant or at least one of its principals is a fully qualified and licensed (if necessary under applicable local law) builder by profession, has adequate experience in constructing the type of units proposed as well as projects of similar size, scope, and complexity, and will be able to complete the work in accordance with the FmHA approved drawings and specifications.

(B) Based upon the information presented in the applicant's financial statements, the applicant is presently able and is likely to continue to be able to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(C) The total development cost of the project does not exceed that which is typical for similar type projects in the area. When the State Director determines it advisable, the State Director may require independent cost estimation by a professionally recognized cost estimation firm to help substantiate the total development cost of this project. The total development cost recognized by FmHA for each individual case will be determined by the Multiple Family Housing Coordinator with the advice of the State Architect.

(D) The owner-builder has provided sufficient information on all contracts or subcontracts in excess of $10,000 to permit compliance with § 1924.6(a)(11)(iv).

(iii) The development cost of the project may include a typical builder's fee for overhead (general requirements and builder's overhead) and for builder's profit. A typical builder's fee for these purposes may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers, and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's fee or other fees for overhead and profit which exceed the amounts shown on their cost breakdown.

(iv) Under no circumstances will loan funds be used to pay the applicant or its stockholders, members, directors, or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate.

(v) The plans and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(vi) When architectural services are required by § 1924.13(a) during the construction and warranty phases they must be provided by an architect who has no identity of interest with the applicant/owner-builder. The services to be rendered during the construction and warranty phases include, but are not limited to inspections, changes in the scope of the project or work to be done, administration of construction accounts, rejection of work and materials not conforming to the FmHA approved drawings and specifications, and other appropriate services listed in § 1924.13(a)(5) (v) and (vi).

(vii) The applicant/owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest as defined in § 1924.4(h) must provide certification as to the actual cost of the work performed in connection with the construction of the project on Form FmHA 1924-13 prior to final payment. For all such projects involving a total development cost of more than $350,000 and any other project where the State Director determines it appropriate, all construction records must also be audited by an independent CPA or LPA who will provide an unqualified opinion as to the actual cost of construction.

(A) When cost certification is required, the CPA or LPA will audit the books, accounts, and records of the owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest with the applicant/owner-builder) concerning the work performed, services rendered, and materials supplied in connection with the construction of the project. Upon completion of construction and prior to final payment, the CPA or LPA will provide an unqualified opinion concerning the actual cost. The CPA or LPA must also certify that the audit has been completed in accordance with generally accepted auditing standards, that to the best of the CPA or LPA's knowledge and belief the actual cost for the construction of the project is accurate and correct as represented, and that the CPA or LPA has no identity of interest in the applicant/owner-builder, architect, engineer, attorney, subcontractors, material suppliers, or equipment lessors. The following format is suggested for this certification and it contains the minimum representations acceptable to FmHA:

We have examined the books and records of (owner-builder) related to the development of the (Project Name and Case Number).

Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying documentation and Form FmHA 1924-13 present fairly the actual cost, in the amount of $———, of the (Project Name). It conforms with generally accepted accounting principles and gives effect to the instructions issued by the FmHA for the recognition of such costs.

Amounts paid and to be paid are shown as of the close of business ———, 19—.

We certify that we have no financial interest in the owner-builder or the project other than in the practice of our profession.

FmHA reserves the right to determine, upon receipt, whether or not the certified statement of cost is satisfactory to FmHA.

(B) Prior to final payment to anyone required to cost certify, FmHA must be provided with a certification and trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with § 1924.13(e)(2)(i)(G). Form FmHA 1924-13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. Fees for overhead (general requirements and overhead) and profit exceeding the amounts shown on the cost breakdown provided in accordance with § 1924.13(e)(2)(i)(G) may not be paid to any owner-builder or to any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner-builder will be adjusted, if necessary, to assure that the fees shown on the certificate of actual cost do not exceed those shown on the cost breakdown.

(viii) Requests for payment for work performed by the owner-builder method, shall be submitted to the FmHA District Director for review and approval prior to each advance of funds in order to insure that funds are used for authorized purposes. Requests for payment shall be made on Form FmHA 424-18 or other professionally recognized form containing the following certifications to FmHA:

I hereby certify to the Farmers Home Administration that I have carefully inspected the work and as a result of my inspection and to the best of my knowledge and belief, the quantities shown in this estimate are correct and have not been shown in previous estimates and the work has been performed in accordance with the contract documents.

---

(Name of Architect)

By: ___

---

(Title)

Approved by Owner's Representative:

By: ___

---

(Title)

Accepted by FmHA Representative:

By: ___

The Review and Acceptance of

---

(Title)

Partial Payment Estimates by FmHA does not Attest to the Correctness of the Quantities shown or that the work has been Performed in accordance with the Plans and Specifications

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit I to Subpart D of Part 1822 of this chapter (FmHA Instruction 444.5) shall be used to inform the interim lender that FmHA will not close its loan until the project is complete, ready for occupancy, evidence is furnished indicating that all bills have been paid for work completed on the project, all inspections have been completed and all required approval have been obtained from municipal and governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the applicant's architect, and accepted by FmHA, the interim lender may advance construction funds in accordance with the provisions of this Section. It is suggested that the partial payment not exceed 90 percent of the value of work in place and material suitably stored on site.

(B) If interim financing is not available, partial payments not to exceed 90 percent of the value of work in place and material suitably stored on site may be made to the owner-builder if the total estimated costs of the improvements and structures are guaranteed by a letter of credit or deposits meeting the requirements of § 1924.6(a)(3)(iii) (A) or (B). Partial payments may not exceed 60 percent of the value of work in place in all other cases. The determination of the value of work in place will be based upon an application for payment containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the borrower's architect, and accepted by FmHA. Prior to receiving the first partial payment, the owner-builder must submit a schedule of prices or values of the various trades or phases of the work aggregating the total development cost of the project as required in § 1924.13(e)(2)(i) (G) and (H). Each application for payment must be based upon this schedule, and show the total amount owed and paid to date for materials and labor procured in connection with the project. With each application for payment, the owner-builder must also submit evidence showing how the requested partial payment is to be applied, evidence showing that previous partial payments were properly applied, and a signed statement from the applicant's attorney, title insurance company, or local official in charge of recording documents certifying that the public records have been searched and that there are no liens of record. When the District Director has reason to believe that partial payments may not be applied properly, checks will be made payable to persons who furnish materials and labor for eligible purposes in connection with the project.

(ix) Under no circumstances shall funds be released for final payment or to pay any items of the builder's fee until the project is 100 percent complete, ready for occupancy, and the owner-builder has completed and properly executed Form FmHA 1924-13 or complied with the cost certification procedures of § 1924.13(e)(2)(vii).

### §§ 1924.14-1924.50 [Reserved]

**Exhibit A.**—*Breakdown of Dwelling Cost for Estimating Partial Payments*

| | With basement percent | Without basement percent |
|---|---|---|
| 1. Excavation | 2 | * |
| 2. Footing and foundations, columns | 7 | 4 |
| 3. Floor joist | 2 | 2 |
| 4. Subfloor | 1 | 2 |
| 5. Wall framing (thru top plates) | 7 | 7 |
| 6. Wall sheathing | 4 | 4 |
| 7. Roof framing, ceiling joist, sheathing and felt | 8 | 9 |
| 8. Roofing | 3 | 3 |
| 9. Felt, siding, exterior trim, porches, etc | 6 | 6 |
| 10. Siding, primed | 1 | 1 |
| 11. Windows and exterior door J | 8 | 9 |
| 12. Plumbing—roughed in | 4 | 5 |
| 13. Sewage disposal | 2 | 2 |
| 14. Heating—roughed in | 1 | 1 |
| 15. Electric—roughed in | 2 | 2 |
| 16. Insulation, walls and ceiling | 1 | 1 |
| 17. Dry wall or plaster | 6 | 7 |
| 18. Basement and porch floors—steps | 2 | 1 |
| 19. Heating—finished | 5 | 5 |
| 20. Flooring, including kitchen and bath | 4 | 4 |
| 21. Interior carpentry, trim and doors | 5 | 5 |
| 22. Cabinets and counter tops | 4 | 4 |
| 23. Interior decoration | 4 | 4 |
| 24. Exterior paint | 2 | 2 |
| 25. Plumbing—complete fixtures, sink and water heater | 4 | 5 |
| 26. Electric—complete fixtures | 1 | 1 |
| 27. Finish hardware | 1 | 1 |
| 28. Gutters and downspouts | 1 | 1 |
| 29. Sanding and finishing floors | 1 | 1 |
| 30. Grading, walks and landscaping | 1 | 1 |
| | 100 | 100 |

* Include with footings and foundations.

**Exhibit B**

*Guidelines for Manufactured Structures and Products*

This Exhibit sets forth general guidelines for establishing a coordinated and uniform evaluation, acceptance, inspection and certification procedure for manufactured housing and products proposed for use in Farmers Home Administration (FmHA) Rural Housing programs. It pertains to the proposed building project package to be provided either under contract between an FmHA borrower and a single contractor for the completed job ready for occupancy or under the conditional commitment program. In either case, the package shall also describe all onsite work that shall be provided by a local builder/dealer who represents the manufacturer. The guidelines also provide a clearer understanding of the use of background information available through the Department of Housing and Urban Developement (HUD) for analysis of manufactured products. The Exhibit also includes evaluation of manufactured farm service buildings in paragraph XII, below. For the purpose of this Exhibit, County Supervisor and County Office also mean District Director and District Office, respectively.

I. Applicable Standards and Manuals.

A. The HUD Technical Suitability of Products Program Handbook, HUD Manual 4950.1, is the official document that must be followed by housing manufacturers if they are to obtain approval of their products. Acceptance documents issued by HUD include: Structural Engineering Bulletins (SEB) on a national basis; Area Letters of Acceptance (ALA) which when accepted by all Area HUD Offices in a HUD region will, in essence, become a Regional Letter of Acceptance; Truss Connector Bulletins (TCB); and, Mechanical Engineering Bulletins (MEB). These documents as well as Material Bulletins (UM) and Materials Release Bulletins (MR) are addendums under paragraphs 513 and 613 to the HUD Minimum Property Standards (MPS).

B. All State FmHA Offices should maintain a close working relationship with each HUD office in their jurisdictional area. This will assure coordination of all Government requirements for housing. The MPS is the base, and all housing structures, design and materials with any deviations therefrom requested by a State or County Office shall only be accomplished by compliance with paragraphs 101-2, 101-3, 101-4 in the MPS. FmHA deviations from the MPS must be approved by the National Office.

II. Housing Types that Require Factory Inspections.

Only those types which cannot be completely inspected on site are required to obtain acceptance from HUD. Those that receive acceptance will be periodically factory inspected by HUD, usually about every 6 months.

III. Housing Types that Do Not Require Factory Inspections.

A. Housing completely assembled on the building site does not require HUD acceptance. This will include housing that is manufactured but is assembled on the site such as: precut pieces, log wall houses, trussed roof rafters or floor trusses, open panel walls, and other types that can be completely inspected on site.

B. Housing that may be assembled in local materials dealers' yards for moving to local sites and to be purchased by an FmHA applicant, will need to be inspected during construction in the yard by the local FmHA County representative. This type usually will be constructed according to the MPS and not transported out of the local FmHA County Office jurisdiction. The inspection must be recorded on Form FmHA 424-12, "Inspection Report."

IV. Manufacturer's Actions Required for Submissions to FmHA, are listed in this Exhibit B, Attachment 1.

V. State FmHA Office Actions when Manufacturing Facilities are in its Jurisdiction. The State Office, upon receipt of manufacturer's submission, must:

A. Determine that the house structural system has been accepted by HUD as appropriate under Manual 4950.1 requirements.

B. Review the thermal characteristics and approach of the calculations to determine actions to be taken in compliance with paragraph IV C of Exhibit D of this Subpart.

C. Review the proposal for compliance with the MPS.

D. Determine that the mandatory prerequisites for consideration of acceptance by FmHA are met. The prerequisites include all of the following:

1. A current acceptance document from HUD (SEB, RLA, LLA),

2. A current HUD Factory Inspection Report, Form No. 2051m. Each report date must be within 6 months and be made by HUD or a HUD authorized agency, and

3. A letter from the manufacturer requesting a review for acceptance for loan consideration. Enclosed with the letter shall be all the information listed in Attachment 1 to this Exhibit.

E. Issue acceptance letters to each manufacturer in its jurisdictional area stating the conditions of acceptance in the format of Attachment 2 to this Exhibit B. The letter shall have an attachment listing all models accepted in the format of Attachment 3 to this Exhibit B. A copy of the Acceptance Letter and list of models shall be sent to each County Office in the State and, when requested by the manufacturer, to each other State FmHA Office in which the product is to be marketed.

F. After initial review of a submission, maintain a Master File of Accepted Manufacturers, and review the file twice yearly to determine the currency of the factory inspection reports and HUD acceptance documents.

G. Notify manufacturers of overdue factory inspection reports, for acceptance of documents review and updating, using the format of Attachment 4 to this Exhibit B. Accompanying the notification will be a temporary acceptance sheet indicating to the manufacturer that the company models have temporary acceptance for 60 days. If the manufacturer provides evidence that a review is being processed by HUD, a maximum of an additional 90 days may be granted. Otherwise, the acceptance shall terminate on the last extension date and it will be necessary for the manufacturer to resubmit as if it is for initial acceptance.

H. Distribute a list of additional models, deleted models, or notice of deletion of any manufacturer's product to the County Offices and other State FmHA Offices as necessary to keep them current of actions.

I. Issue an initial supply of Manufacturer's and Builder's Certification forms (Attachment 5 of this Exhibit B) to each initial and newly accepted manufacturer. Manufacturers are to duplicate this form as necessary in their market areas.

J. Resolve any adverse issues reported by the County Offices with the manufacturer. Action may include coordination, FmHA plant inspections, and cancellation of Acceptance Letters when problems persist.

VI. County Office Actions:

A. When an application is received concerning any of the manufacturer's products on the Accepted List, the County Office FmHA authorized personnel will:

1. Review the Drawings and Description of Materials described in paragraphs A and B of Attachment 1 to this Exhibit B. The floor plans and elevations must be identifiable with the model listed in the Accepted List issued by the State Office.

2. Require the builder/dealer or the manufacturer to provide any drawings necessary to adapt the house to the site conditions where the house will be located.

3. Require a site plan drawing such as illustrated in Exhibit C, Attachments 1 and 2 of this subpart.

4. Inspect and identify the model delivered against the manufacturer's certification and the accepted Drawings and Description of Materials before the unit has been set on the foundation.

5. Require the builder/dealer to certify that the work for which the builder/dealer is responsible has been erected in compliance with the MPS. This certification will be completed on an copy of Attachment 5 to this Exhibit B, and filed in the County Case File.

6. Observe any noncompliance with the MPS, FmHA supplements to the MPS or with paragraphs IV and V of this Exhibit B. In this respect:

a. Minor noncompliances will be resolved by the manufacturer through the builder/dealer. In cases where there is no builder/dealer, the County Office may resolve such issues with the manufacturer directly.

b. Noncompliances that cannot be resolved at County Office level, will be reported to the State Office.

7. Inspect manufactured housing according to § 1924.8(d) of this Subpart.

8. Be aware that models on the Accepted List may include many models from which loan applicants may choose one. Therefore, no changes in model designs are permitted. The Accepted List may include larger houses for larger families. The model selected by any applicant should be judged by the needs of that particular family in accordance with FmHA Instruction 444.1, paragraph VII B 1, which is available in all FmHA offices. The fact that a model is listed does not warrant acceptance if the model is in excess to the applicant's needs and repayment ability.

VII. Noncompliance Issues:

A. When minor issues are noted, the County Office will attempt to resolve them as described above. If they cannot be resolved locally, they will be referred to the State Office. When any issues cannot be resolved at State Office level, the National Office Environmental and Technology Staff (ETS) will be contacted for guidance.

B. The National Office ETS, coordinating with HUD, will take the appropriate actions to resolve the issues reported.

C. Manufacturers and Builder/Dealers must be aware that if the FmHA inspector finds any of the following conditions, the inspector may refuse to accept the construction until corrections have been made:

1. Evidence of noncompliance with any option of the method described in the HUD—SEB, RLA, or LLA.

2. Faulty shop frabrication including surface defects.

3. Damage to shop fabricated items or materials due to transportation, improper storage, handling, or assembly operation.

4. Unsatisfactory field or site workmanship.

VIII. Actions by Other State FmHA Offices. When a State Office receives a copy of the Accepted List from the State Office in which a manufacturing plant is located, it will:

A. Maintain a file by manufacturer of each Accepted List of models.

B. Provide copies of the Accepted List of models to each County Office in the State.

C. Request a copy of the drawings, description of materials, and thermal calculations to determine compliance with the thermal requirements for the county in which the house is to be located according to Exhibit D of this Subpart.

D. Check to see that County Offices within the State will act as prescribed in paragraph VI of this Exhibit B.

IX. MPS Interpretation Actions:

A. When two or more State Offices have different interpretations of the requirements of the MPS as it relates to a specific structure, there must be an agreement between the States so that they will have the same requirements.

B. If the States cannot agree, the National Office ETS shall be consulted for guidance.

X. Subsequent Review:

FmHA will make periodic reviews of houses, both site built and houses manufactured offsite, to determine acceptability of the finished product. If, in the judgment of the FmHA, the product has failed to perform satisfactorily, acceptance may be withdrawn. Withdrawal, however, will not be effective without sufficient warning to the manufacturer and the builder/dealer. Negotiations for corrections will be initially carried out by the County Office with the assistance of the State Office or National Office, as necessary.

XI. Materials and Products Acceptance Material Release Bulletins, Use of Materials Bulletins, Manufacturer's Instructions:

A. The Materials Release and Use of Materials Bulletins provide for the national acceptance of specific nonstandard materials and products not covered in the current MPS.

B. When contractors or builders intend to use products or materials not listed as approved in Appendixes C or F in the MPS, the FmHA personnel reviewing or concerned with the approval of construction in which the product is to be used, will require the contractor or builder to furnish a Materials Release Bulletin or Use of Materials Bulletin on the materials or products. If the product has been accepted, the supplier should be able to obtain the bulletin for the contractor or builder from the manufacturer. These bulletins describe the products or materials limitations to use, method of installing or applying, approved type of fasteners, if used, etc., and will provide the contractor with instructions as to proper installation or application.

C. When FmHA personnel are unfamiliar with any materials or products which have been accepted in Appendixes C or F in the MPS, they will request the contractor or builder to furnish the manufacturer's instructions so as to be assured that the materials or products are properly installed or applied. Any questions on any product that cannot be resolved in the County Office should be referred to the State Office. When the question cannot be resolved at the State Office level, the National Office ETS should be consulted for guidance.

XII. Manufactured Farm Service Buildings:

A. When a loan application is received that involves a manufactured building or special equipment that cannot be completely inspected on the site, the local State Land Grant University recommendations should be requested.

B. When the County Office questions the advisability of making a loan on a manufactured building, the State Office should also be consulted.

C. The State Office should review and make recommendations to the County Office. If doubt still exists, the National Office ETS should be consulted for guidance.

**Exhibit B**

**Attachment 1**

*List of Submission Exhibits for Manufactured Housing*

The manufacturer or sponsor of manufactured housing wishing to participate in the Farmers Home Administration (FmHA) Rural Housing programs shall submit to the FmHA State Director having jurisdiction over the State in which the proposed housing is to be manufactured, two copies each of the information listed in this Exhibit for an acceptance review. Experience has shown that submissions not including all the information result in delays with the reviews necessary for determination of acceptance:

A. Statements:

1. Name and location of organization including principal officers,

2. A brief description of plant facilities,

3. Extent of intended market distribution,

4. The method of quality control during field erection,

5. A copy of the applicable current HUD Structural Engineering Bulletin (SEB), Regional Letter of Acceptance (RLA), or Local Letter of Acceptance (LLA),

6. A current inspection report made within 6 months by HUD or HUD authorized agency,

7. Any other pertinent information such as name and address of third party inspection agency and an erection manual if available for field use,

8. Location of nearest assembled product for observation and inspection,

9. List of other States in which structures will be marketed,

10. Specifications or descriptions of materials using either Form FmHA 424-2, (HUD-FHA Form 2005) "Description of Materials," including sizes, species and grade of all building and finishing materials. All blanks should be filled and additional sheets may be attached as well as equipment manufacturer's brochures. Use an asterisk (*) to denote all items of onsite construction that will be provided by the builder-dealer. The builder-dealer must complete a form for the builder-dealer's portion of the work. Use N/A in all blanks where an item is not applicable,

11. Provide names and addresses of other public and private agencies which have rendered or been asked to render a technical suitability or acceptance determination with respect to the products or structural methods employed, and

12. Provide an index of all documents submitted.

B. *Working Drawings.* For emphasis as to the details required for manufactured housing proposals, the following items are listed in addition to and in more detail than the requirements in Exhibit C of this Subpart. In some cases, the drawing presentation sheets may be required to be reduced to 200 mm by 266 mm (8 x 10½ inches) sheet size:

1. Foundation and/or Basement Plan. This plan shall include anchorage details, exterior and interior dimensions, typical footings, wall thickness, pilaster sizes and locations, columns or pier sizes and locations and girders required to support the structure. Show location of all equipment (furnance, water heater, laundry tubs, sump, etc.) floor drains, electrical outlets, electrical entrance panels, and all doors and windows or crawl space vents with all sizes indicated,

2. Floor Plans of all levels. Show square footage of each habitable room with square footage of each area of natural light and ventilation. In addition, a design sketch scaled properly to illustrate a typical furniture arrangement for all habitable levels is required to indicate intended occupancy functions of the design. A window and door schedule should also be provided indicating glazed size, sash size, and thermal conductance of each type,

3. All exterior elevations including openings and sizes; wall finish materials, flashing, finish grades intended, depth of footings when known, finish floor, ceiling heights, roof slope, location of downspouts, gutters, vents for both structural spaces and for equipment. Indicate construction joint locations and details of connections between sections, modules or components,

4. Building cross sections showing size and spaces of all framing members of lowest member (bottom of footing) to highest point of roof (ridge) plus:

a. Type of material and method of application of all covering materials, such as, subflooring, combination subflooring and underlayment, sheathing and interior and exterior finishes,

b. Complete details including computations of trussed rafter systems with the architect/engineer's stamp of those responsible for the design,

c. Details of insulation and vapor barrier installation and attic ventilation. If the thermal characteristics to be provided are determined according to the optional method for overall structure performance allowed in Exhibit D of this Subpart, the submission and complete engineering calculations with all details of construction shall be sent to Administrator, Attn. ETS, FmHA, Washington, DC 20250, for analysis as prescribed in paragraph IV C of Exhibit D of this Subpart,

d. Special details as necessary to show any special features of construction including method of fabricating, erection, joining, and finishing of all elements, and

e. Details and sections of stairways including all critical dimensions, such as, rise, run, and headroom,

5. Interior evaluations of kitchen cabinets and bathroom elevations with schedule of all shelf, counter top and drawer footage. A statement as to how kitchen cabinets are to be provided: as custom made for each model or made for any model by a cabinet manufacturing company with compliance with ANSI A 161.1 as required by paragraph 611-1.1 in the MPS,

6. Plumbing schematics including pipe materials, sizes and plumbing code compliance,

7. Heating plan including heat loss of each room and, if applicable, heat gain. For forced air systems, include supply and return duct layout and location of appropriate diffusers,

8. Electrical plan including circuit diagram, and

9. Any other pertinent facts that will better explain why and how certain unusual materials or structural methods are employed.

**Attachment 2**

John Dough Manufacturing Company, 3444 Residence Avenue, Elktown, IN 00051.

Dear Sirs: Although the documents submitted to this office have only received a cursory review, they appear to be in substantial compliance to qualify your firm for the type of acceptance indicated on the attached Accepted List.

The acceptance being issued is conditioned upon this letter of conditions, on the compliance with HUD Technical Suitability of Products Program 4950.1 compliance with Farmers Home Administration's Thermal Performance Standards, and compliance with the conditions set forth in the HUD acceptance document, if applicable, whose number appears on the acceptance.

The manufacturer and his/her authorized Builder-Dealer bear the responsibility of complying with the above the exhibits submitted, and HUD Minimum Property Standards.

The manufacturer and/or Builder-Dealer also shall:

1. Provide positive identification of the modular unit by model, date of manufacture and factory in which the unit was manufactured.

2. Furnish with each home to be financed by Farmers Home Administration in (State) a written certificate endorsed by the Builder-Dealer certifying that all compliances have been satisfied.

3. Furnish the County Supervisor with a complete set of drawings including site plans, description of materials, structural engineering bulletin when applicable in the State, and documentation relating to the manufacture, transportation, erection, and installation for each model of manufactured house to be financed in the county.

The basic drawings approved by HUD as listed in the Structural Engineering Bulletin as well as the floor plans and elevations must be a part of each set of drawings supplied to FmHA personnel. Electrical, plumbing and heating plans must be furnished for each model in addition to the basic drawings listed in the Structural Engineering Bulletin. Floor plans and elevation drawings may vary from those listed in the Structural Engineering Bulletins (SEB) to reflect each of the manufacturers models provided they are in compliance with HUD Minimum Property Standards and the FmHA Thermal Performance Standards and provided they have been accepted and listed in this state's approval of manufactured structures. No field alterations to the accepted models will be allowed.

4. When required by the County Supervisor, foundation drawings (including seismic considerations of the unit and foundations when a home is to be constructed in seismic zones) adapting the modular home to any unusual site conditions needing information additional to that furnished by the standard drawings.

5. Furnish the County Office with a copy of all (minimum of two yearly) HUD inspection reports of the manufacturing facilities immediately after the inspection reports have been completed.

6. Allow FmHA personnel to inspect the plant facilities at any time and furnish all FmHA State Offices, where approval has been obtained, with a copy of any Farmers Home Administration Inspection Reports of the firm's manufacturing facilities immediately after the inspection reports have been completed.

7. Furnish the County Office with HUD review of the firm's Acceptance Document no later than the review date listed on the Acceptance Documents.

8. In the event there are major changes in the drawings from those submitted, obtain approval under the HUD 4950.1 program and submit verification of this approval to the County Office for FmHA State Acceptance Listing. Any modular home shipped with major changes incorporated and not having such changes on file at the County Office may be rejected.

This acceptance may be subject to corrective action when deficiencies are noted in the product, field inspections manufacturing facilities or when there is noncompliance with the provisions of the HUD 4950.1 program.

9. (Each state can continue with state and local requirements appropriate to this letter of conditions.)

The inclusion of these models on the acceptance list is based on the materials and structural aspects of the manufactured units. Final determination of acceptability rests with FmHA personnel. Other factors relating to the property in its entirety such as appraisal, location, sustained market acceptance, architectural planning and appeal, thermal qualities, mechanical and electrical equipment, etc., must be considered in the final determination.

Your cooperation in this Acceptance Program is appreciated.

Sincerely,

____________,

*State Director.*

BILLING CODE 3410-07-M

Exhibit B
Attachment 3

Date______________ File No._______

APPROVAL OF MANUFACTURED STRUCTURES
(BASED ON HUD 4950.1 PROGRAM)

Manufacturer:

______________________________ Acceptance Document____________

______________________________ Type of Approval

______________________________ /_/ Regular

______________________________ /_/ Temporary, Expires________

Plant Locations: ________________________________

Date of Latest Plans Reviewed ________________________________

Date of Latest Factory Inspection________________________________

Acceptance Document Review Date ________________________________

FmHA THERMAL PERFORMANCE STANDARDS, EXHIBIT D, 1924 A

| State (Par III A) | NATIONAL (Par III C) |
|---|---|
| Degree days for State Area______ | Walls R_____ Window/Wall Area Ratio____% |
| Walls R_____ Floor______ | Ceilings R_____ Area Doors_____ |
| Ceilings R_____ Glazing _____Pane(s) | Floor R_____ Glazing ____pane(s) |
| Insulated Door _____Wood & Storm____ | Insulated Door_____Wood & Storm _____ |

Models Approval:

BILLING CODE 3410-07-C

**Attachment 4**

John Dough Manufacturing Company, 3444 Residence Drive, Elktown, IN 00051.

Dear Sirs: As set forth in acceptance letters issued by this office, acceptance of Manufactured Modular Homes in this State is based on HUD's Technical Suitability of Products Program 4950.1 and the conditions stated in the acceptance letter. Your file has been reviewed and the following has been noted.

———Inspection of your plant facilities is overdue. Inspections are required twice yearly. The last inspection on file at this office dated ———.

———Your Structural Engineering Bulletin No. —— dated ——— has not been reviewed. Reviews are generally required every three years. Temporary Approval may be considered after the review date if the manufacturer can provide evidence that the review documents were submitted to HUD.

———The drawings being used for the construction of your homes are not with the drawing listed in your Structural Engineering Bulletins. Drawings used in the field should be those upon which the Structural Engineering Bulletin was issued.

———There have been —— additional revisions to the MPS since the last drawings dated ——— we have on file for your homes. It is recommended that the revisions be reviewed to ascertain whether your plans are affected by any of the changes.

It will be necessary that the above items be received within —— days, otherwise your product will be removed from this approved listing until such time that your firm can again qualify for listing. Should you have any difficulties in furnishing the above within the time stated, please contact this office.

We will be looking forward to receiving the materials indicated so that your firms listing may be continued.

Sincerley,

———,

*State Director.*

**Attachment 5**

*Certification by Manufacturer*

Delivery location of structure or component

———

This is to certify that Model ——— Serial Number ——— Manufactured ——— 19— in our ——— plant and being sold to ——— Builder/Dealer or Borrower has been manufactured in compliance with plans and specifications on file in the FmHA State Office and that the construction complies with the HUD Minimum Property Standards except as modified by HUD Acceptance Document (SEB, RLA, LLA) No. ——— dated ———, and in compliance with any FmHA supplements to the HUD Minimum Property Standards.

Dated ———. ———

Signature of Authorized Factory Official

———

Title

*Certification by Builder*

——— certifies that the foundations and other on-site work has been constructed in accordance with the attached revised dwelling and the on-site construction for the above borrower has been erected, installed or applied in compliance with HUD/FmHA Minimum Property Standards.

It is understood that the manufacturer's certification does not relieve the builder of his/her responsibility under the terms of the builder's warranty required by the National Housing Act.

Date ———.

———

Signature of Authorized Official

———

Title of Authorized Official

**Exhibit C**

**List of Required Drawings and Specifications**

This list applies to all new buildings to be constructed, including all single family housing and related facilities and as applicable to farm housing and farm service buildings.

I. General: The documents recommended in this Exhibit correspond with the list of Exhibits required in Chapter 3 of the Department of Housing and Urban Development (HUD) "Handbook for Building Single-Family Dwellings" No. 4145.2. However, this listing shall be used as a guide for drawings and specifications to be submitted in support of all types of housing loan and/or grant applications or any type of application involving the construction of buildings. This Exhibit may be used as a public handout. A copy of the drawings and specifications shall be provided by the applicant for a loan or conditional commitment which involves construction of major new buildings or extensive rehabilitation or alterations or additions to existing buildings. Drawings and specifications, for minor alterations or repairs, need pertain only to work to be done and may be in narrative form when accepted by the County Supervisors. Adequate and accurate Drawings and Specifications are necessary:

A. To determine compliance with the applicable standards and codes,

B. To prepare a cost estimate,

C. To determine the acceptability of the physical improvements, and

D. To provide a basis for inspections and the builder's warranty.

II. Drawings for Individual Applications: Drawings for single family individual housing shall be submitted by the applicant and provide at least the following:

A. *Plot Plan* Ratio: 1:240 (1″ = 20) (at scale, 1″ = 20′ or 1/16′ = 1′0″ minimum):

1. Lot and block number.

2. Dimensions of plot and north point.

3. Dimensions of front, rear, and side yard.

4. Location and dimensions of garage, carport, and other accessory buildings.

5. Location and sizes of walks, driveways, and approaches.

6. Location and sizes of steps, terraces, porches, fences and retaining walls.

7. Location and dimensions of easements and established setback requirements, if any.

8. Elevations at the following points: (a) First floor of dwelling and floor of garage, carport and other accessory building; (b) finish curb or crown of street at points of extension of lot lines; (c) finish grade elevation at each principal corner of structure; (d) finish grade at bottom of drainage swales at extension of each side of structure as feasible.

9. The following additional elevations, as applicable, shall be submitted if the topography or the design of the structure is such that special grading, drainage or foundations may be necessary. Examples are irregular or steeply sloping sites, filled areas on sites, or multilevel structure designs: (a) finish and existing grade elevations at each corner plot; (b) existing grade at each principal corner of dwelling; (c) finish grade at both sides of abrupt changes of grade such as retaining walls, slopes, etc.; (d) other elevations that may be necessary to show grading and drainage.

10. Indication of lot grading type and approximate location of drainage swales.

11. Example Plot Plan No. 1 attached.

12. Where an individual water supply and/or sewage system is proposed, submit drawings and specifications prescribed in Section 5 of this Exhibit and written opinion of Health Authority having jurisdiction and opinion, if available, of local USDA-Soil Conservation Service Official.

B. *Floor Plans.*

1. Scale, 1:50 (1/4″ = 1′0″).

2. Floor plan of each floor and basement, if any. Recommend typical furniture locations shown to suggest intended use of each habitable space.

3. Plan of all attached terraces and porches, and of garage or carport.

4. If dwelling is of crawl space type, provide separate foundation plan. Slab-type foundation may be shown on sections.

5. Direction, size and spacing of all floor and ceiling framing members, girders, columns or piers.

6. Location of all partitions and indication of door sizes and direction door swing.

7. Location and size of all permanently installed construction and equipment such as kitchen cabinets, closets, storage shelving, plumbing fixtures, water heaters, etc. Details of kitchen cabinets may be on separate drawing.

8. Location and symbols of all electrical equipment, including switches, outlets, fixtures, etc.

9. Heating system on separate drawing, or when it may be shown clearly it may be part of the floor or basement plan showing: (a) layout of system; (b) location and size of ducts, piping, registers, radiators, etc.; (c) location of heating unit and room thermostat; (d) total calculated heat loss of dwelling including heat loss through all vertical surfaces, ceiling and floor. When a duct or piped distribution system is used, calculated heat loss of each heated space is required.

10. Cooling system, on separate drawings or, as part of heating plan, floor or basement plan showing: (a) layout of system; (b) location and size of ducts, registers, compressors, coils, etc.; (c) heat gain calculations, including estimated heat gain for each space conditioned; (d) model number and Btu capacity of equipment or unit in accordance with applicable Air Conditioning and Refrigeration Institute (ARI) or American Society of Refrigerating Engineers (ASRE)

Standard; (e) Btu capacity and total Kilowatt (KW) input at stated local design conditions; (f) if room or zone conditioners are used, provide location, size and installation details.

C. *Exterior Elevations.*

1. Scale, 1:50 (¼" = 1'0"). Elevations, other than main elevation, which contain no special details may be drawn at 1:100 (⅛" = 1'0").

2. Front, rear and both side elevations, and elevations of any interior courts.

3. Windows and door—indicate size unless separately scheduled or shown on floor plan.

4. Wall finish materials where more than one type is used.

5. Depth of wall footings, foundations, or piers, if stepped or at more than one level.

6. Finish floor lines.

7. Finish grade lines at buildings.

D. *Details and Sections.*

1. Section through exterior wall showing all details of construction from footings to highest point of road. Where more than one type of wall material is used, show each type. Scale, 1:50 (⅜" = 1'0") minimum.

2. Section through any portion of dwelling where rooms are situated at various levels or where finished attic is proposed, Scale, 1:50 (¼" = 1'0") minimum.

3. Section through stair wells, landings, and stairs, including headroom clearances and surrounding framing. Scale, 1:50 (¼" = 1'0") minimum.

4. Details of roof trusses if proposed, including connections and stress or test data with seal of architect or engineer responsible. Scale of connections, 1:50 (⅜"=1'0") minimum.

5. Elevation and section through fireplace. Scale 1:50 (⅜"=1'0") minimum.

6. Elevations and section through kitchen cabinets, indicating shelving. Scale, 1:50 (¼"=1'0") minimum.

7. Sections and details of all critical construction points, fastening systems, anchorage methods, special structural items or special millwork. Scale as necessary to provide information, 1:50 (⅜"=1'0") minimum.

III. Drawings for Group Applications. Drawings for group applications (conditional commitments) may be submitted in lieu of drawings for each individual property when a number of applications are simultaneously submitted involving repetition of a basic type dwelling.

A. *Master Plot Plan* shall include the following:

1. Scale which will provide the following information in a clear and legible manner.

2. North point.

3. Location and width of streets and rights-of-way.

4. Location and dimensions of all easements.

5. Dimensions of each lot.

6. Location of each dwelling on lot with basic dimensions.

7. Dimensions of front, rear, and side yard.

8. Location and dimensions of garages, carports, or other accessory buildings.

9. Identification of each lot by number and indication of basic plan and elevation type.

10. Location of walks, driveways, and other permanent improvements.

B. *Typical Plot Plan* for each basic type dwelling may be submitted in lieu of fully detailing each lot on Master Plot Plan, when topography and lot arrangements present no individual planning or construction problems.

1. Information not shown on Typical Plot Plan shall be included on Master Plot Plan.

2. Typical Plot Plans shall not be used for corner lots, lots with irregular boundaries, lots involving pronounced topographic variations or other lots where individual detailing is necessary.

3. Show location of dwelling on typical lot and full dimensions.

4. Provide location and dimensions of all typical improvements, such as garage, carport, accessory buildings, walks, drives, steps, porches, terraces, trees, shrubs, retaining walls, fences, etc.

C. *Grading* may be shown on separate grading plan or on the Master Plot Plan. Scale shall be sufficiently large to provide the following information in clear and legible manner:

1. Contours of existing grade at intervals of not more than 1.524 m (5 feet). Intervals less than 1.524 m (5 feet) may be required when indicated by the character of the topography.

2. Location of House and accessory buildings on each lot.

3. Identification of each lot by number.

4. Elevations in accordance with individual plot plan including bench mark and datum or, in lieu of finish grade elevations, contours of proposed finish grading may be submitted. Contour intervals selected shall be appropriate to the topography of the site.

5. Lot grading shall be shown by indicating protective slopes and approximate location of drainage swales.

6. Location of drainage outfall if any drainage is not to a street.

D. *Floor Plans, Elevations, Sections, and Details* shall be submitted for each basic plan. Alternate elevations to basic plan may be shown at scale, 1:100 (⅛"=1'0").

IV. Specifications. Form FmHA 424-2, "Description of Materials," or other acceptable and comparable descriptions of all materials forms shall be submitted with the drawings by the applicant. The forms shall be completed fully in accordance with the instructions on Form FmHA 424-2 to describe the materials to be used in the construction.

A. Submit the drawings along with each application.

B. Form FmHA 424-2 may be reproduced provided size, format and printed text are identical to current official form. When current official form is reproduced, the following deletions must be made:

1. All lines indicating FmHA form numbers or other Government agency initials and numbers, and

2. The United States Government Printing Office (GPO) imprint and reference number.

C. The material identification information shall be in sufficient detail to fully describe the material, size, grade and where applicable, manufacturers model or identification numbers.

Where necessary, additional sheets must be attached as well as manufacturers specification sheets for equipment and/or special materials, such as aluminum siding and carpeting.

V. Individual Water Supply and Sewage Disposal Systems. When an individual water and/or sewage disposal system is proposed the following additional information must be submitted:

A. *Approval and recommendations of various authorities.*

1. A written opinion by the health authority having jurisdiction that the site is suitable and acceptable for the proposed system(s) and

2. If available, a soils report from the local USDA-Soil Conservation Service Office and any recommendations they may have.

3. Approval of appropriate environmental control authority.

4. A signature of the health authority on the plot plan indicating approval of design of the proposed system.

B. *Plot Plan.*

1. Location and size of septic tank, distribution box, absorption field or bed, seepage pits and other essential parts of the sewage disposal system and distance to all individual wells and open streams or drainageways.

2. Location of well, service line and other essential parts of the water supply system and distance to other wells and/or sewage disposal systems.

3. Exact location of individual systems (water or sewage) on adjacent properties and description of system if available.

4. Example Plot Plan No. 2 attached.

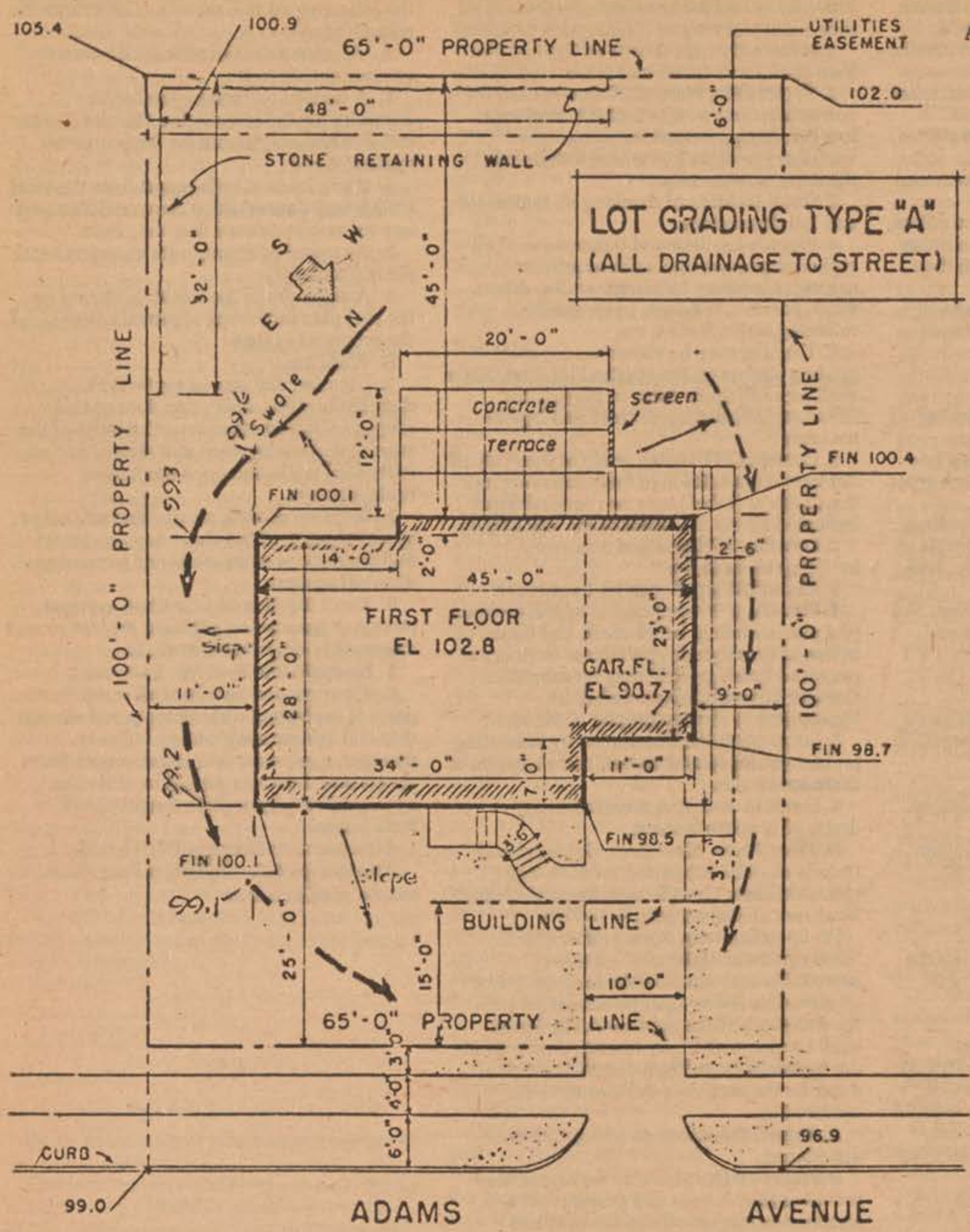
C. Construction details of all component parts of individual water supply and sewage disposal system shall clearly indicate material, equipment and construction. Extra sheets and drawings should be added as necessary to fully explain the proposed installation.

Attachment 1: Example Plot Plan No. 1.

Attachment 2: Example Plot Plan No. 2.

BILLING CODE 3410-07-M

Exhibit C
Attachment 1

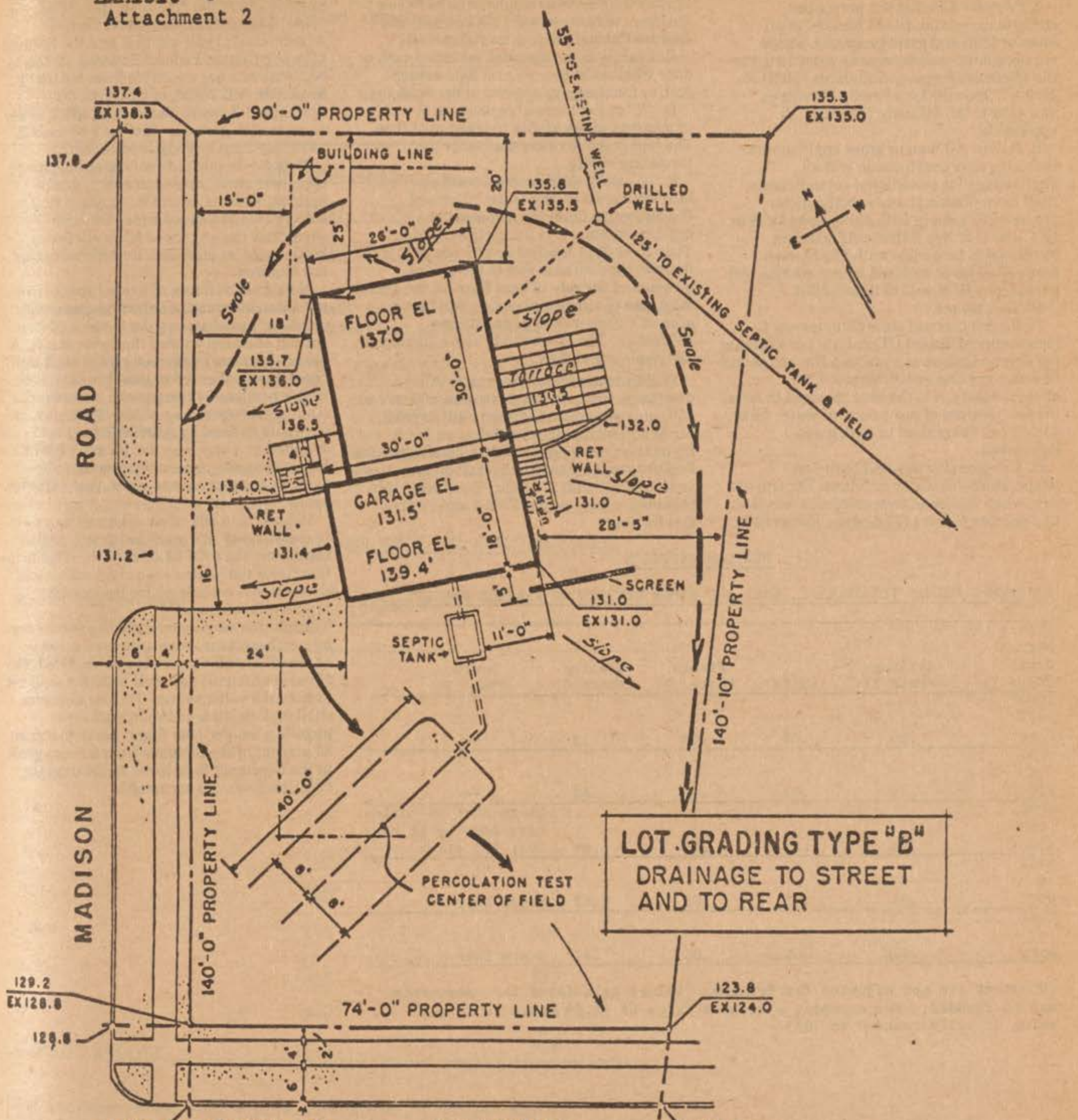



Lot 4 Block 7
CHESTNUT HILL - BRAINARD, COLUMBIA

Scale 1/16" = 1'-0"

EXAMPLE PLOT PLAN No 1

Exhibit C
Attachment 2




LOT 29. BLK. 2 HEALTH AUTHORITY ------------------
HOMESTEAD ADDITION, LINCOLN COUNTY, COLUMBIA
EXAMPLE PLOT PLAN NO. 2 *Scale 1" = 20'*

BILLING CODE 3410-07-C

**Thermal Performance Construction Standards**

I. *Purpose.* This Exhibit prescribes construction standards to be used in all housing loan and grant programs. These requirements shall supersede those listed in the Minimum Property Standards (MPS) No. 4900.1, "One and Two Family Dwellings," and 4910.1, "Multifamily Housing," as applicable.

II. *Policy.* All loan or grant applications involving new construction and all applications for conditional commitments shall have drawings and specifications prepared to comply with paragraphs IV A or IV C and D of this Exhibit. All existing dwellings to be bought with FmHA loan funds shall be considered in accordance with paragraphs IV B or C of this Exhibit.

III. *Definitions.*

A. *British thermal units (Btu)* means 1 (International Table) (IT) calorie per kilogram per degree Celsius is equal to 1 Btu per pound of water per degree Fahrenheit. Or approximately, it is the heat required to raise the temperature of one pound of water from 59 degrees Fahrenheit to 60 degrees Fahrenheit.

B. *A degree day* is a unit based on temperature difference and time. For any one day, when the mean temperature is less than 18.3 degrees Celsius (65 degrees Fahrenheit), there are as many degree days as the degree Celsius difference in temperature between the mean temperature for the day and 18.3 degrees Celsius (65 degrees Fahrenheit).

C. *Glazing* is the material set into a sash or door when used as a natural light source and/or for occupant's views of the outdoors.

D. *"R" value,* thermal resistance, is a unit of measure of the ability to resist heat flow. The higher the R value, the higher the insulating ability.

E. *"U" value* is the overall coefficient of heat transmission and is the combined thermal value of all the materials in a building section. U is the reciprocal of R. Thus $U=1/R$ or $R=1/U$ or $1/C$ where C is the thermal conductance and is the unit of measure of the rate of heat flow for the actual thickness of a material one square foot in area at a temperature of one degree Fahrenheit. The lower the U value, the higher the insulating ability.

IV. *Minimum Requirements.* A. All dwellings, single family or multifamily, to be constructed with FmHA loan and/or grant funds and all repair, remodeling or renovation work performed on dwellings with FmHA loan/or grant funds shall be in conformance with the following, except as provided in paragraphs IV B 3 and IV D of this Exhibit:

NEW CONSTRUCTION

MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OF VARIOUS CONSTRUCTION

| Winter Degree Days (Note 1) | Ceilings (Note 2) | Walls | Floors (Note 3) | Glazing (Note 4) | Doors (Note 5) |
|---|---|---|---|---|---|
| 1000 or less | .05 | .08 | .08 | 1.13 | -- |
| 1001 to 2500 | .04 | .07 | .07 | .69 | -- |
| 2501 to 4500 | .03 | .05 | .05 | .69 | Storm door if hollow core door or if over over 25% glass |
| 4501 to 6000 | .03 | .05 | .05 | .47 | Storm Door |
| 6001 or more | .026 | .05 | .05 | .47 | Storm Door |

(U values are not adjusted for framing. Values calculated for components may be rounded. For example, a total R Value of 18.88 converts to a U value of .0529 rounded to .05)

**Note 1.**—Winter degree days may be obtained from the ASHRAE Handbook; the "NAHB Insulation Manual for Homes Apartments"; local utilities; and the National Climatic Center, Federal Building, Asheville, NC. Manuals are available from NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901. Other sources of degree day data may be used if available from a recognized authority.

**Note 2.**—In pitched roof construction, compression of insulation at the outside building walls is permitted to allow for a 1 inch ventilation space under the roof sheathing. For any loose fill insulation, a baffle must be provided. Raised trusses are not required.

**Note 3.**—For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces the U value of floor section shall not exceed the value shown. A basement, crawl space, or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 F. Positive heat supply is defined by ASHRAE as "heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space."

Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of foundation wall sections shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SPACE

| Winter Degree Days (65 F Base) | Maximum U Value | Glazing* |
|---|---|---|
| 2500 or less | No requirement | 1.13 |
| 2501 to 4500 | 0.17 | 1.13 |
| 4501 or more | 0.10 | 0.69 |

*(Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.)

Note 4.—Sliding glass doors are considered as glazing. The glazing value is for glass only. Glazing shall be limited to 15 percent of the gross area of all exterior walls enclosing heated spaces in accordance with Table 6–7.1 in the MPS 4900.1.

Note 5.—1¾ inch metal faced door systems with rigid insulation core and durable weatherstripping providing a "U" value equivalent to a wood door with storm door and an infiltration rate no greater than .50 cfm per foot of crack length tested according to ASTM E–283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All doors shall be weatherstripped. Any glazed areas must be double-glazed.

MINIMUM R VALUES OF PERIMETER INSULATION FOR SLABS-ON-GRADE

| Winter Degree Days (65 F Base) | Minimum R Values * Heated Slab | Unheated Slab |
|---|---|---|
| 500 or less | 2.8 | -- |
| 1000 | 3.5 | -- |
| 2000 | 4.0 | 2.5 |
| 3000 | 4.8 | 2.8 |
| 4000 | 5.5 | 3.5 |
| 5000 | 6.3 | 4.2 |
| 6000 | 7.0 | 4.8 |
| 7000 | 7.8 | 5.5 |
| 8000 | 8.5 | 6.2 |
| 9000 | 9.2 | 6.8 |
| 10000 or greater | 10.0 | 7.5 |

*(For increments between degree days shown, R values may be interpolated.)

B. All existing dwellings to be purchased with RH loan and grant funds shall be insulated in accordance with the following:

EXISTING CONSTRUCTION

MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OF VARIOUS CONSTRUCTION

| Winter Degree Days (Note 1) | Ceilings | Walls (Note 2) | Floors (Note 3) | Glazing | Doors (Note 5) |
|---|---|---|---|---|---|
| 1000 or less | .05 | | .08 | 1.13 | -- |
| 1001 to 2500 | .04 | | .07 | .69 | -- |
| 2501 to 4500 | .03 | | .05 | .69 | Storm door if hollow core door or if over over 25% glass |
| 4501 to 6000 | .03 | | .05 | .69 | Storm Door |
| 6001 to 7000 | .026 | | .05 | .69 | Storm Door |
| 7001 or more | .026 | | .05 | .69 | Storm Door |

(U values are not adjusted for framing. Values calculated for components may be rounded. For example, a wall section with a total R value of 18.88 converts to a U value of .0529 rounded to .05.)

**Note 1.**—Winter degree days may be obtained from the ASHRAE Handbook; the "NAHB Insulation Manual for Homes Apartments"; local utilities; and the National Climatic Center, Federal Building, Asheville, NC.

Manuals are available from NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901.

Other sources of degree day data may be used if available from a recognized authority.

**Note 2.**—Walls shall be insulated as near to new construction standards as economically feasible. Any exterior wall framing exposed during repair or rehabilitation work shall have vapor barrier installed and be fully insulated.

**Note 3.**—For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces the U value of floor section shall not exceed the value shown.

A basement, crawl space or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 F. Positive heat supply is defined by ASHRAE as "heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space."

Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of foundation wall sections shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SPACE

| Winter Degree Days (65 F Base) | Maximum U Value | Glazing* |
|---|---|---|
| 2500 or less | No requirement | 1.13 |
| 2501 to 4500 | 0.17 | 1.13 |
| 4501 or more | 0.10 | 0.69 |

*(Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.)

**Note 4.**—Slab edge insulation should be provided wherever practical in areas of 2500 or more winter degree days. Rigid insulation placed on the exterior face of the slab shall be protected by a durable and weather resistant material.

**Note 5.**—Storm doors not required for double doors, sliding doors or others where installation would be economically infeasible. 1¾ inch metal faced door systems with rigid insulation core and durable weatherstripping providing a "U" value equivalent to a wood door with storm door and an infiltration rate no greater than .50 cfm per foot of crack length, tested according to ASTM E-283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All doors shall be weatherstripped.

C. *Optional Standards.* Housing design not in compliance with the requirements of paragraphs IV A or B of this Exhibit may be approved in accordance with the provisions of this paragraph. Requests for acceptance proposed under paragraph C 1 below, must be approved by the State Director. Requests for acceptance proposed under paragraph C 2 must be approved by the Administrator. All submissions of proposed options to the State Director or Administrator shall contain complete descriptions of materials, engineering data, test data when U values claimed are lower than the ASHRAE Handbook of Fundamentals, and calculations to document the validity of the proposal. All data and calculations will be based upon the current edition of the ASHRAE Handbook of Fundamentals or other universally accepted data sources.

1. *Overall "U" values for envelope components.* The following requirements shall be used in determining acceptable options to the requirements of paragraphs IV A and IV B of this Exhibit.

a. Uo (gross wall)—Total exterior wall area (opaque wall and window and door) shall have a combined thermal transmittance value (Uo value) not to exceed the values shown in Figure 1. Equation 1 shall be used to determine acceptable combinations to meet the requirements of Figure 1.

BILLING CODE 3410-07-M

Exhibit-D
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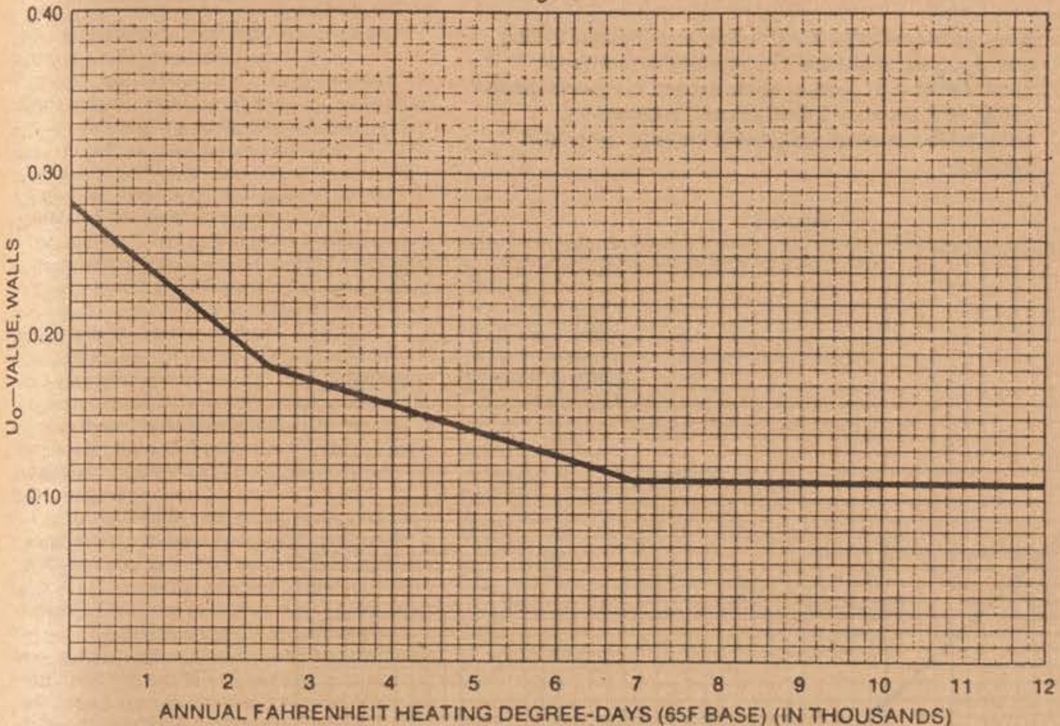
Figure 1




Equation 1, formula for determining combinations (See Figure 1):

$$U_o = \frac{U_{wall}A_{wall} + U_{window}A_{window} + U_{door}A_{door}}{A_o}$$

where:

$U_o$ = the average thermal transmittance of the gross wall area, Btu/h•ft²•F

$A_o$ = the gross area of exterior walls, ft²

$U_{wall}$ = the thermal transmittance of all elements of the opaque wall area, Btu/h•ft²•F

$A_{wall}$ = opaque wall area, ft²

$U_{window}$ = the thermal transmittance of the window area, Btu/h•ft²•F

$A_{window}$ = window area (including sash), ft²

$U_{door}$ = the thermal transmittance of the door area, Btu/h•ft²•F

$A_{door}$ = door area, ft²

Note: Where more than one type of wall, window and/or door is used, the U x A term for that exposure shall be expanded into its sub-elements, as:

$U_{wall_1}A_{wall_1} + U_{wall_2}A_{wall_2}$, etc.

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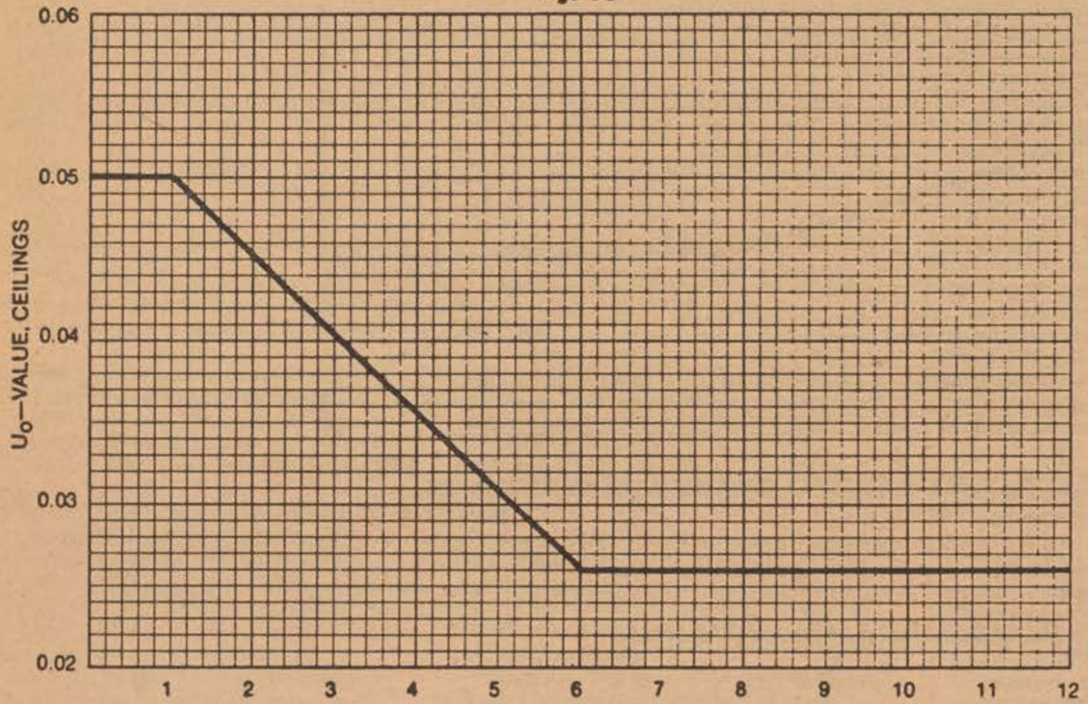
b. $U_o$ (gross ceiling) - Total ceiling area (opaque ceiling and skylights) shall have a combined thermal transmittance value ($U_o$-value) not to exceed the values shown in Figure 2. Equation 2 shall be used to determine acceptable combinations to meet the requirements of Figure 2.

Figure 2




Equation 2, formula for determining roof/ceiling combinations:

$$U_o = \frac{U_{roof}A_{roof} + U_{skylight}A_{skylight}}{A_o}$$

where:

$U_o$ = the average thermal transmittance of the gross roof/ceiling area, Btu/h•ft²•F

$A_o$ = the gross area of a roof/ceiling assembly, ft²

$U_{roof}$ = the thermal transmittance of all elements of the opaque roof/ceiling area, Btu/h•ft²•F

$A_{roof}$ = opaque roof/ceiling area, ft²

$U_{skylight}$ = the thermal transmittance of all skylight elements in the roof/ceiling assembly, Btu/h•ft²•F

$A_{skylight}$ = skylight area (including frame), ft²

Note: Where more than one type of roof/ceiling and/or skylight is used, the U x A term for that exposure shall be expanded into its sub-elements, as:

$U_{roof_1}A_{roof_1} + U_{roof_2}A_{roof_2}$, etc.

BILLING CODE 3410-07-C

2. *Overall structure performance.* The following requirements shall be used in determining acceptable options to the requirements of paragraphs IV A and B of this Exhibit.

a. The methodology must be cost effective to the energy user, and must not adversely affect the structural capacity, durability or safety aspects of the structure.

b. All data and calculations must show valid performance comparisons between the proposed option and a structure comparable in size, configuration, orientation and occupant usage designed in accordance with paragraphs IV A or B. Structures may be considered for FmHA loan consideration which can be shown by accepted engineering practice to have energy consumption equal to or less than those which would be attained in a representative structure utilizing the requirements of paragraphs IV A or B.

3. *Special consideration for seasonally occupied farm labor housing.* The following sets forth the minimum acceptable options to the requirements of paragraphs IV A or B of this Exhibit for seasonally occupied housing serving as security for farm labor housing loans and grants.

a. Where the period of occupancy does not encounter 500 or more heating degree days (HDD) as determined by an average of the previous 10 years based upon local climatological data published by the National Oceanic and Atmospheric Administration, Environmental Data Service, the standards of paragraphs IV A or B will not apply.

b. Where the period of use exceeds 500 heating degree days (HDD), the 10-year average value for the period of occupancy shall be used to determine the degree to which the thermal insulation requirements of paragraphs IV A or B shall apply.

c. If mechanical cooling is provided and the period of occupancy encounters more than 700 cooling degree days (CDD) as determined by an average of the previous 8 years based upon local climatological data published by the same source cited in paragraph IV C 3 a above, the thermal insulation requirements for 1,000 and less degree days as stated in paragraph IV A or B shall apply.

D. *Energy efficient construction practices.* This section prescribes those items of design and quality control which are necessary to guarantee the energy efficiency of homes built according to the standards of this Exhibit. Also included are recommendations for extra energy efficiency in dwellings.

1. *Infiltration:*

a. Requirements: All construction shall be performed in such a manner as to provide a building envelope free of excessive infiltration.

(1) Caulking and sealants. Exterior joints around windows and door frames, between wall cavities and window or door frames, between wall and foundation, between wall and roof, between wall panels, at penetrations of utility services through walls, floors and roofs, and all other openings in the exterior envelope shall be caulked, gasketed, weatherstripped, or otherwise sealed. Caulking shall be silicone rubber base or butyl rubber base, conforming to Federal Specifications TT–S–1543 and TT–S–1657 respectively, or materials demonstrating equivalent performance in resilience and durability.

(2) Windows shall comply with ANSI 134.1, NWMA 15–2; the air infiltration rate shall not exceed 0.5 ft$^3$/min per ft. of sash crack.

(3) Sliding glass doors shall comply with ANSI 134.2, NWMA 15–3; the air infiltration rate shall not exceed .5 ft$^3$/min per square ft. of door area.

(4) All insulation placed in open cavity walls shall be installed so that all spaces behind electrical switches and receptacles, plumbing, ductwork and other obstructions in the cavity are insulated as completely as possible. Insulation shall be omitted on the side facing the conditioned area, however, the vapor barrier in walls must not be cut or destroyed.

b. Recommendations:

(1) Wrap outside corners of wall sheathing with 15 lb. asphalt impregnated building felt before siding application.

(2) Utilize vestibules for entry doors, especially those facing into the direction of winter wind.

(3) In design of the home, place plumbing, mechanical and electrical in interior partitions as much as possible. If possible, design should comply with paragraph 615–5.3i of the MPS.

2. *Heating and/or Cooling Equipment.*

a. Requirements: All mechanical equipment for heating and/or cooling habitable space shall be designed to provide economy of operation.

(1) All space heating equipment (including fireplaces) requiring combustion air shall be sealed combustion types, or be located in a nonconditioned area (such as unheated basements) or adequate combustion air must be provided from outside the conditioned space.

(2) All ductwork shall be designed and installed so as to minimize leakage. All metal to metal connections shall be mechanically joined and taped.

b. Recommendations:

(1) Wherever possible, locate ductwork inside of conditioned areas in dropped ceilings, interior partitions or other similar areas.

(2) Locate outside cooling units in areas not subject to direct sunlight or heat buildup.

3. *Vapor Barrier:*

a. Requirements: Adequate vapor barriers must be provided adjacent to the interior finish material of the wall or other closed envelope components which do not have ventilation space on the non-conditioned side of the insulation.

(1) A vapor barrier at the inside of the wall or other closed envelope component must have a perm rating less than that of any other material in that component and in no case have a perm rating greater than one. All vapor barriers must be sealed around all openings in the interior surface. Vapor barriers are not required in ceilings and floors. Continuous vapor barriers on ceilings, walls, and floors require adequate moisture vapor control in the conditioned space.

(2) All vapor producing or exhausting equipment shall be ducted to the outside and be equipped with dampers. This equipment includes rangehoods, bathroom exhaust fans, and clothes dryers. If a dwelling design proposes the use of windows to satisfy the kitchen and/or bathroom ventilation requirements of the MPS, the incorporation of dehumidification equipment should be considered in accordance with paragraph IV D 3 b. Exhaust of any equipment shall not terminate in an attic or crawl space.

b. Recommendation: Forced air heating/cooling systems should include humidification/dehumidification systems where conditions indicate.

V. *General Design Recommendations:*

A. Orient homes with greatest glass area facing south with adequate overhangs to control solar gain during non-heating periods.

BILLING CODE 3410-07-M

Exhibit-D
Page-14

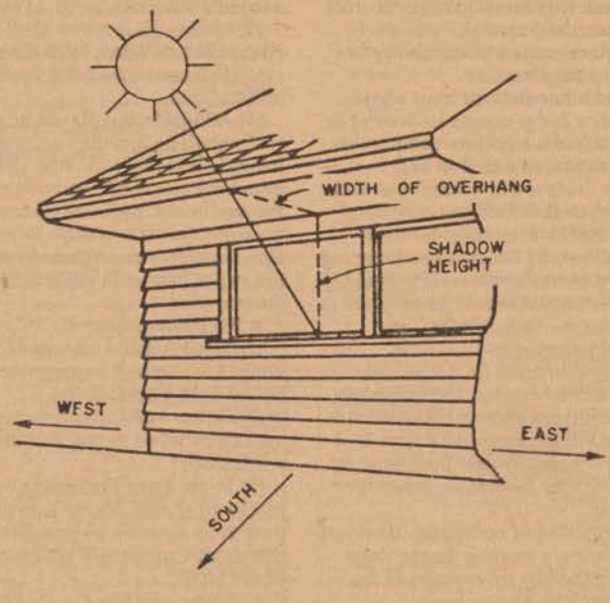
## ROOF OVERHANGS

Roof overhangs, or extensions of the roof, over south walls are usually easy to incorporate into house designs. To determine the *width of overhang* needed to shade a south wall or window, follow this method:

(1) Consider the *latitude* of the geographical area in which your house is located. (See map below.) Latitude, together with season of the year, determines the angle at which the sun's rays strike the earth at different times of day.

(2) Measure on your plan or house the number of feet the south windows extend below the eave of the roof or horizontal overhang. This measurement is the *shadow height*.

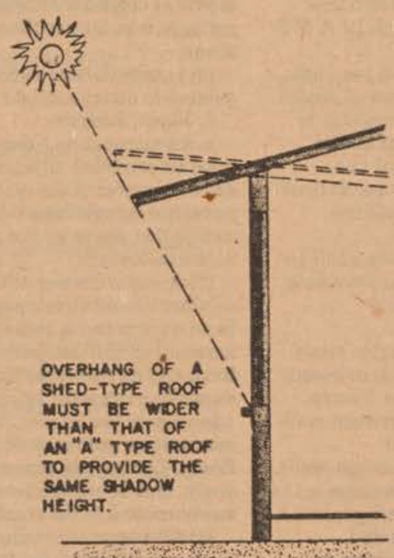
(3) Then for that specific latitude and shadow height, you will find, from the table given here, the exact width of overhang needed.





| NORTH LATITUDE (DEGREES) | SHADOW HEIGHT (FEET) 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|
| | WIDTH OF OVERHANG (FEET) | | | | | |
| 25 | 1.1 | 1.5 | 1.9 | 2.2 | 2.6 | 3.0 |
| 30 | 1.4 | 1.9 | 2.4 | 2.9 | 3.4 | 3.8 |
| 35 | 1.8 | 2.4 | 3.0 | 3.5 | 4.1 | 4.7 |
| 40 | 2.1 | 2.8 | 3.6 | 4.3 | 5.0 | 5.7 |
| 45 | 2.6 | 3.4 | 4.3 | 5.1 | 6.0 | 6.8 |
| 50 | 3.0 | 4.1 | 5.1 | 6.1 | 7.1 | 8.2 |

**For example, in a latitude of 35° and for a shadow height of 5 feet, the width of overhang needed is 3 feet.**




BILLING CODE 3410-07-C

B. Arrange plantings with evergreen wind buffers on north side and deciduous trees on south.

C. Wherever possible orient entry door away from winter winds.

D. Design house with simple shape to minimize exterior wall area.

E. Minimize glass areas within constraints of required light and ventilation, applicable safety codes and other appropriate consideration.

F. Minimize the amount of paved surface adjacent to the structure where heat gain is not desirable.

VI. *State Supplements.* State supplements or policies will not be issued or adopted to either supplement or set requirements different than those of this Exhibit without the prior written approval of the National Office.

### Exhibit E—Preconstruction Conference

Prior to the signing of a construction contract, there shall be a discussion between the borrower(s), prospective contractor, architect (if applicable), and the County Supervisor or District Director, as applicable. During this discussion a mutual understanding should be reached on the following points:

1. The contract is between the borrower and the contractor and although FmHA is interested in the proper execution of the contract, it will not become a party to the contract nor incur any responsibility or liability thereunder.
2. Any changes made to the drawings and specifications will be initialed and dated on all copies by the contractor, the borrower, and the County Supervisor.
3. The contractor's obligation under the terms of the contract to do the work in accordance with the drawings and specifications.
4. Compliance with the provisions contained in Form FmHA 424-6, "Construction Contract," or other contract form being used, if authorized.
5. FmHA will be consulted prior to any changes in the contract. Changes will be made only upon approval by FmHA.
6. The Contract Change Order (Form FmHA 424-7) must be executed by the owner and contractor, and approved by FmHA. Any additional funds required must be provided by the owner.
7. The time for completion of construction and liquidated damages should be determined.
8. Consideration of the State laws regarding the rights of persons furnishing material, equipment, or labor to place a claim or lien against the property in cases in which their bills are not paid.
9. The use of Forms FmHA 424-10, "Release by Claimants," and FmHA 424-9, "Certificate of Contractor's Release," should be discussed.
10. The borrower's responsibility for making site visits as the work progresses.
11. Periodic and final inspections will be made by an authorized FmHA employee or representative to protect the security interest of the Government. The borrower is responsible for making any inspections necessary to adequately protect the interest of the borrower.
12. The contractor's responsibility of notifying FmHA that work is ready for inspection 2 working days prior to the date of the inspection.
13. The contractor's responsibility to provide a warranty upon completion of the work.
14. Any other pertinent information.

### Exhibit F—Payment Bond

Know All Persons By These Presents: that

———————————————

(Name of Contractor)

———————————————

(Address of Contractor)

a ———————————————

(Corporation, Partnership or Individual), hereinafter called Principal and

(Name of Surety) ———————————————

hereinafter called Surety, are held and firmly bound unto

(Name of Owner) ———————————————

(Address of Owner) ———————————————

hereinafter called owner and the United States of America acting through the Farmers Home Administration hereinafter referred to as Government, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of ——— Dollars ($——) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The Condition of this Obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the —— day of —— 19—, a copy of which is hereto attached and made a part hereof for the construction of:

———————————————

———————————————

Now, therefore, if the Principal shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and for all labor cost incurred in such Work including that by a Subcontractor, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

Provided, that beneficiaries or claimants hereunder shall be limited to the Subcontractors, and persons, firms, and corporations having a direct contract with the Principal or its Subcontractors.

Provided, further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the Work or to the Specifications.

Provide, further, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, or other than one having a direct contract with the Principal (or with the Government in the event the Government is performing the obligations of the Owner), shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of *one* (1) year following the date of which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in the Bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Provided, further, that it is expressly agreed that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the principal and the Surety to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this Bond and whether referring to this Bond, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

Provided, further, that no final settlement between the Owner or Government and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In Witness Whereof, this instrument is executed in (Number) —— counterparts, each one of which shall be deemed an original, this the —— day of ———.

Attest:

Principal ———————————————

(Principal) Secretary ———————————————

(Seal)

By ——————————— (s)

(Address) ———————————————

Witness as to Principal ———————————————

———————————————

(Address) ———————————————

Surety ———————————————

Attest:

Witness as to Surety ———————————————

———————————————

(Address) ———————————————

By ———————————————

Attorney-in-Fact

(Address) ——————

Note.—Date of Bond must not be prior to date of Contract. If Contractor is partnership, all partners should execute Bond.

Important: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

**Exhibit G—Performance Bond**

Know All Persons By These Presents: that

——————

(Name of Contractor)

——————

(Address of Contractor)

a ——————

(Corporation, Partnership, or Individual), hereinafter called Principal, and

(Name of Surety) ——————

(Address of Surety) ——————

hereinafter called Surety, are held and firmly bound unto

(Name of Owner) ——————

(Address of Owner) ——————

hereinafter called Owner, and the United States of America acting through the Farmers Home Administration hereinafter referred to as the Government in the total aggregate penal sum of ——— Dollars ($——) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The Condition of this Obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the —— day of —— 19—, a copy of which is hereto attached and made a part hereof for the construction of:

——————

——————

Now, therefore, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, or Government, with or without notice to the Surety and during the guaranty period and if the Principal shall satisfy all claims and demands incurred under such contract, and shall fully idemnify and save harmless the owner and Government from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner and Government all outlay and expense which the Owner and Government may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

Provided, further, that the liability of the Principal and Surety hereunder to the Government shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the Owner, provided, however, that the Government may, at its option, perform any obligations of the Owner required by the contract.

Provided, further, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to Work to be performed thereunder or the Specifications accompanying same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

Provided, further, that it is expressly agreed that the Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the Principal and the Surety to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this Bond, and whether referring to this Bond, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

Provided, further, that no final settlement between the Owner or Government and the Principal shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The Owner and Government are the only beneficiaries hereunder.

In Witness Whereof, this instrument is executed in (Number) —— counterparts, each one of which shall be deemed an original, this the —— day of ———.

Attest:

Principal ——————

(Principal) Secretary ——————

(Seal)

By —————— (s)

(Address) ——————

Witness as to Principal ——————

——————

(Address) ——————

Surety ——————

Attest:

Witness as to Surety ——————

——————

(Address) ——————

By ——————

Attorney-in-Fact

(Address) ——————

**Exhibit H—Prohibition of Lead-Based Paints**

I. *Purpose.* This Exhibit prescribes the methods to be used to further comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, Pub. L. 91–695, as amended (42 U.S.C. 4801 et seq.) and the amendment to section 501(3) of Pub. L. 91–695 (42 U.S.C. 4841(3)) as amended by the National Consumer Health Information and Health Promotion Act of 1976, Pub. L. 94–317.

II. *Policy.* The Farmers Home Administration (FmHA) shall not permit the use of lead-based paint on applicable surfaces of any housing or buildings purchased, repaired, or rehabilitated for human habitation with financial assistance provided by this agency. Paragraph 509–7.3 in the Minimum Property Standards (MPS) prescribes the maximum lead content for the paints used on applicable surfaces.

III. *Definitions:* A. Housing and buildings mean any house, apartment, or structure intended for human habitation. This includes any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center or extended care facilities, college housing, domestic or migratory labor housing, hospitals, group practice facilities, community facilities, and business or industry.

B. Applicable surfaces means all interior surfaces, whether accessible or not, and those exterior surfaces which are readily accessible to children under 7 years of age such as stairs, decks, porches, railings, windows, and doors.

C. Lead-based paint means any paint containing more than .5 of 1 percentum lead by weight, or with respect to paint manufactured after June 22, 1977, lead-based paint containing more than six one-hundredths of 1 percentum lead by weight.

IV. Requirements: A. All new housing and buildings shall comply with paragraph 509–7.3 of the MPS 4900.1 and 4910.1.

B. For all existing housing and buildings built after 1950, FmHA requires that for all loans closed after July 19, 1978, the applicant for a loan or grant, or the tenants be notified of the potential hazard of lead-based paints, of the symptoms and treatment of lead poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. This will be accomplished by providing each borrower or tenant with a copy of "Lead-based Paint Hazards, Symptoms, Treatment, and Techniques for Eliminating Hazards," which is available in all FmHA County Offices. Attachment 1 may be obtained in adequate numbers by the County Supervisor from the Finance Office, 1520 Market Street, St. Louis, Mo. 63103.

C. For all *existing housing* or buildings constructed before 1950 on which a loan is closed after July 19, 1978, FmHA requires that the applicant, borrower, or tenant be notified as in paragraph IV B and a copy of Exhibit H, Attachment 2, "Caution Note on Lead-Based Paint Hazard" shall be attached to Form FmHA 440–41, "Disclosure Statement for Loans Secured by Real Estate," or if 440–41 is not required, that the caution note be delivered to the hands of the borrower. The caution note shall read as follows:

"This housing was constructed before 1950. There is a possibility that it may contain some lead-based paint that was in use before 1950. See 'Lead-based Paint Hazards,' leaflet, available in all FmHA County Offices, for more information."

For all property transfers and inventory property sales, the caution note, Exhibit H, Attachment 1, and the information leaflet, "Lead-based Paint Hazards," shall be handed to the purchaser by the FmHA representative.

D. All inventory housing or buildings built before 1950 to be repaired, renovated, or rehabilitated shall have tests for lead content, and where found to be hazardous, shall have any interior lead-based paint removed entirely. Loose or cracked surfaces shall be cleaned down to the base surface before repainting with a paint containing not more than six one-hundredths of 1 percentum lead by weight in the total nonvolatile content of the paint for the equivalent measure of lead in the dried film of paint already applied or both. Contracting officers shall include the following provision prohibiting the use of lead-based paint in all contracts and subcontracts for construction or rehabilitation of housing or buildings:

*Lead-Based Paint Prohibition*

No lead-based paint containing more than .5 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 22, 1977, no lead-based paint containing more than .06 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any subsequent subcontrators.

Authority: This amendment is made under provisions of 5 U.S.C. 301, 40 U.S.C. 486(c).

Done at ———, ——— this —— day of ———, 19—.

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FmHA Representative

V. *Summary:* Section 401 of the Lead-based Paint Poisoning Prevention Act as amended by the National Consumer Health Information and Health Promotion Act of 1976, Pub. L. 94–317, provides a requirement that each federal agency issue regulations and to take such other steps necessary to prohibit the use of lead-based paint on all applicable surfaces in Federal and Federally-assisted construction or rehabilitation of residential structures. The Lead-Based Paint Poisoning Act, Pub. L. 91–695, January 13, 1971, provides for grants to units of general local government in any State for the purpose of detecting and treating incidents of lead-based paint poisoning. Title II of this Act also provides for grants to the same units to identify those areas of risk including testing to detect the presence of lead-based paint on surfaces of residential housing.

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(U.S.C. 1889; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: May 22, 1980.

**Gordon Cavanaugh,**

*Administrator, Farmers Home Administration.*

[FR Doc. 80–17721 Filed 6–11–80; 8:45 am]

**BILLING CODE 3410-07-M**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

### Misadministration Reporting Requirements; Correction

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Correction of final rule.

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**SUMMARY:** On May 14, 1980, NRC published in the **Federal Register** [45 FR 31701] a final rule on the misadministration of radioactive material to patients. Several words were inadvertently omitted from that final rule. The purpose of this notice is to correct that omission.

**FOR FURTHER INFORMATION CONTACT:** Edward Podolak, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (Telephone: 301–443–5860).

**SUPPLEMENTARY INFORMATION:** In the May 14, 1980 **Federal Register** [45 FR 31701], the last two sentences of § 35.42[a] on page 31704 read: "[If the referring physician or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee shall not delay medical care for the patient because of this.]" Those last two sentences of § 35.42[a] should have the brackets deleted and should read: "If the referring physician, patient or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of this."

Dated at Washington, D.C., this 9th day June, 1980.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 80–17728 Filed 6–11–80; 8:45 am]

**BILLING CODE 7590-01-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 79-NE-03, Amdt. 39-3795]**

### Avco Lycoming Division LTS101–600A, –600B, –600A–2, and –650A–2 Turboshaft and LTP101–600 and –600A Turboprop Engines; Airworthiness Directives

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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**SUMMARY:** This amendment amends an existing airworthiness directive (AD) applicable to Avco Lycoming LTS101–600A, –600B, –600A–2, and –650A–2 , Turboshaft and LTP101–600 and –600A turboprop engines by permitting alternate means of detecting lubrication system contamination.

**EFFECTIVE DATE:** June 2, 1980.

**FOR FURTHER INFORMATION CONTACT:** John E. Tigue, Propulsion Section (ANE–214), Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273–7347.

**SUPPLEMENTARY INFORMATION:** This amendment amends Amendment 39–3506, 44 FR 37619, AD 79–06–06, which currently requires the performance of repetitive spectrometric oil analysis for oil system contamination. If the results of the spectrometric oil analysis exceed acceptable limits on Avco Lycoming Division LTS101–600A, –600B, –600A–2, and –650A–2 turboshaft and LTP101–600 and –600A turboprop engines, inspection and repair prior to further flight are required. Since issuing Amendment 39–3506, the FAA has determined that certain engine installations incorporating full flow scavenge chip detectors provide an equivalent means of detecting lubrication system contamination. Accordingly, an alternative means of compliance is provided for Avco Lycoming LTS101–600A, –600B, –600A–2, and –650A–2 turboshaft engines used in such installations. Also, provision is make for additional alternative means of detecting lubrication system contamination as may be approved at a later date.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the