the words "Research and Special Programs Administration".

§§ 190.2007, 193.2015, 193.2017, 193.2057, 193.2059, 193.2067 and 193.2515 [Amended]

74. Part 193 is amended by removing the words "Director, Materials Transportation Bureau" and the word "Director" wherever they appear in the following sections and inserting in their place the words "Administrator, Research and Special Programs Administration" or the word and letters "Administrator, RSPA", respectively:

Sections 193.2007 (the definition is deleted and its replacement is relocated to its appropriate alphabetical order), 193.2015, 193.2017, 193.2057, 193.2059, 193.2067, and 193.2515.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

75. The authority citation for Part 195 continues to read as follows:

Authority: Sec. 203, Pub. L. 96-129, 93 Stat. 1004, 49 U.S.C. 2002; 49 CFR 1.53 and Appendix A to Part 1.

§ 195.3 [Amended]

76. Part 195 is amended by removing the words "Material Transportation Bureau" wherever they appear in § 195.3(b) and inserting in their place the words "Research and Special Programs Administration".

§§ 195.54, 195.58 and 195.62 [Amended]

77. Part 195 is amended by removing the words "Information Systems Manager," or "Information Systems Manager, Materials Transportation Bureau" wherever they appear in the following sections and inserting in their place the words "Information Resources Manager," or "Information Resources Manager, Office of Pipeline Safety", respectively.

Sections 195.54, 195.58 and 195.62.

Issued in Washington, D.C., on October 29, 1985.

M. Cynthia Douglass,

Administrator.

[FR Doc. 85-26110 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-60-M

federal register

Friday
November 1, 1985

Part VI

Department of Energy

10 CFR Part 962

Byproduct Material; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 962

Byproduct Material

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy proposes to issue regulations under section 161.p. of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.;* hereinafter the "AEA") for the purpose of clarifying the Department of Energy's obligations under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.;* hereinafter "RCRA"). This regulation will clarify the application of the term Byproduct Material, as defined in section 11e(1) of the AEA (42 U.S.C 2014(e)(1)), to Department of Energy owned or produced radioactive waste substances for the purpose of determining which of these waste substances are Byproduct Material under the AEA and are therefore not "solid waste" as that term is defined in RCRA. This proposed rule does not affect materials that are Byproduct Material under section 11e(2) of the AEA.

The proposed regulations are necessary to clarify which of these radioactive wastes shall continue to be regulated by DOE exclusively under the AEA and which wastes shall be subject to regulation both under RCRA and the AEA.

DATE: Comments must be received on or before December 2, 1985.

ADDRESSES: Comments should be addressed to: Henry K. Garson, Esq., Assistant General Counsel for Environment, Department of Energy, 1000 Independence Ave., SW., GC-11, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Henry K. Garson, Esq., Assistant General Counsel for Environment, Department of Energy, 1000 Independence Ave., SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

Robert J. Stern, Director, Office of Environmental Guidance (EH-23), Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 252-4600.

SUPPLEMENTARY INFORMATION:

Background

The Resource Conservation and Recovery Act (RCRA), enacted in 1976, establishes a comprehensive regulatory scheme to govern the generation, transportation, treatment, storage and disposal of hazardous waste. Federal agencies are required by section 6001 of RCRA (42 U.S.C. 6961) to comply with that regulatory scheme in the same manner, and to the same extent, as any private person or entity. DOE had interpreted section 1006 of RCRA (42 U.S.C. 6905) as exempting from regulation under RCRA DOE's activities and substances subject to the AEA relating to our Nation's national security programs. In 1984, the United States District Court disagreed with this interpretation and held RCRA to be applicable to the activities of DOE under the Atomic Energy Act. *LEAF* v. *Hodel*, 586 F.Supp. 1163 (E.D. Tenn. 1984).

By its definitional provisions, however, RCRA excludes from its regulatory scheme "source, special nuclear and byproduct materials," as those terms are defined by the AEA (section 1004(27) of RCRA, 42 U.S.C. 6903(27)). Thus, any DOE waste substance which is Source, Special Nuclear or Byproduct Material, even those that otherwise could qualify as hazardous waste under RCRA, will continue to be regulated under DOE's exclusive AEA regulatory authority.

The AEA provides detailed definitions for Source Material and Special Nuclear Material, but only defines Byproduct Material, in pertinent part, as "any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material," section 11e(1). While in practice, little need has previously arisen to address this definition's applicability to radioactive wastes, the use in RCRA of Byproduct Material as a waste term now requires a clarification of what DOE radioactive waste substances meet the statutory definition of Byproduct Material.

II. Discussion

Unlike the AEA's definitions of the related terms Source Material (section 11z. of the AEA, 42 U.S.C. 2014(z)) and Special Nuclear Material, (section 11aa. of the AEA, 42 U.S.C. 2014(aa)) which mention particular substances by name, the definition of Byproduct Material, for purposes here pertinent, speaks only in terms of a technical process. The legislative history of this definition provides little guidance as to its intended application, and the definition has not been clearly elucidated by judicial interpretation.[1] Because the plain words of the definition are keyed to the process for producing and utilizing Special Nuclear Material, that process itself would appear to be determinative of whether particular radioactive materials are properly within the definition. Thus, while the definition is clear on its face that Byproduct Material must be radioactive, it would appear that radioactivity alone does not suffice to characterize a waste substance as Byproduct Material. The radioactive waste must be either directly yielded in the process of producing or utilizing special nuclear material, or have been made radioactive as a direct and necessary consequence of that process.

Radioactive wastes that are accelerator produced or that are yielded in the process of producing or utilizing Source Material or Byproduct Material are not Byproduct Material, because those wastes do not result from the process of producing and utilizing Special Nuclear Material. If those wastes display any hazardous characteristics, they would, under the regulation proposed today, be subject to regulation under RCRA, despite their radioactivity.

In contrast, high-level radioactive waste emanating from the chemical processing of spent fuel for the production of plutonium, and radioactive waste cutting oil used for the machining of plutonium to a usable configuration, are Byproduct Material as defined in the AEA, and therefore are excluded from regulation under RCRA, because the contained radioactivity in these wastes is a direct, necessary and inherent consequence of the process of producing and utilizing Special Nuclear Material. These wastes, which today's proposed rule would define as Byproduct Material, are perhaps best thought of as production or utilization "direct process wastes."

Intermediate to the examples set forth in the two preceding paragraphs is the case of wastes whose contained radioactivity is an indirect result, rather than direct process waste, from the process of producing and utilizing Special Nuclear Material. For example, some DOE facilities prepare Byproduct radionuclides for use in commerce. While it is clear that the products as radionuclides are themselves Byproduct Material, it would appear less clear that the radioactive residues resulting from

[1] Two early decisions interpreting the Atomic Energy Commission's licensing authority over low level radioactive waste clearly conclude that these wastes are Byproduct Material. The specific issue of whether the wastes, in their entirety, were Byproduct Material was not, however, specifically at issue because the wastes clearly contained Byproduct Material subjecting them to regulation by the AEC. Harris County v. United States, 292 F.2d 370 (5th Cir. 1961); City of New Britain v. Atomic Energy Comm'n, 308 F.2d 648 (D.C. Cir. 1962).

the preparation or use of the products are properly so characterized, because their contained radioactivity is at best an indirect consequence of the process for producing and utilizing Special Nuclear Material, by no means a direct process waste. Such wastes and wastes made radioactive in a similar manner, may be termed "indirect process wastes." While containing Byproduct Material, these wastes would not, under today's proposed rule, be considered Byproduct Material in their entirety. Rather, if otherwise found to contain hazardous waste, they would be considered "mixed waste", containing both Byproduct Material and or other radioactive material and hazardous waste.

While it would appear possible to construe the AEA to include indirect process wastes and other mixed wastes as Byproduct Material because, in the context of DOE's AEA activities, their contained radioactivity is, in the most literal sense, "incident to" the process for producing and utilizing Special Nuclear Material and these wastes clearly contain Byproduct Material, it would seem more accurate to say that these wastes are primarily incident to a different process, the process employed by DOE to produce commercial radionuclide products. Under this line of reasoning, while indirect process wastes would be said to *contain* Byproduct Material (trapped radionuclides, to use the example given in the preceding paragraph), they would not themselves *be* Byproduct Material, because their contamination with radioactivity is neither a direct nor, strictly speaking, a necessary consequence of the process for producing and utilizing Special Nuclear Material. Because of this distinction, DOE is proposing that these indirect process wastes exhibiting hazardous characteristics be treated as "mixed" waste, handled in accordance with the requirements of both RCRA and the AEA.

Thus, DOE's proposed interpretation of "Byproduct Material" for purposes of clarifying RCRA's applicability to radioactive waste substances at DOE's AEA facilities, would apply only to production or utilization "direct process wastes."

This proposed rule is supported by the fact that virtually all radioactive waste substances yielded in the process for producing or utilizing special nuclear material are contained, dissolved or suspended in a nonradioactive medium, from which their separation is impracticable. High-level radioactive waste and most transurantic waste, for example, exist only in this form; the maximum practicable separation of their radioactive and nonradioactive components has already occurred before the substances are actually disposed of or classified as waste. It seems apparent, then, that unless the term "radioactive material" as used in section 11e(1) of the AEA is taken to include the entirety of a direct contact process waste substance in which radioactive elements are dispersed, the exclusion of Byproduct Material from RCRA's coverage would be reduced to a virtual nullity.

III. Effect of Proposed Rule

DOE has prepared for each of its facilities a report indicating which existing individual waste streams would be considered Byproduct Material under this proposed rule, and which individual waste streams would be considered mixed wastes. (The reports identify some wastes as "candidate" mixed wastes because it is not yet known whether there are in fact hazardous constituents in these waste streams.) These reports are available for inspection at the following locations during normal business hours:

U.S. Department of Energy, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585
Albuquerque Operations Office, National Atomic Museum, Wyoming Blvd., Building 20358, Albuquerque, NM 87115
Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401
Nevada Operations Office, Public Reading Room, 2753 South Highland Street, Las Vegas, NV 89109
Oak Ridge Operations Office, Federal Building, 200 Administration Road, Oak Ridge, TN 37830
Richland Operations Office, Hanford Science Center, 825 Jadwin Street, Richland, WA 99352
San Francisco Operations Office, 1333 Broadway, 2nd Floor Oakland, CA 94612
Savannah River Operations Office, FOI Publication/Document Room, University of South Carolina—Aiken, Aiken SC 29801

Should processes change, or should new waste streams not in reports be produced, these wastes would be classified using the definition proposed today, applied in a consistent manner to achieve consistent results. DOE believes that this porposed rule provides a reasonable basis to classify the wastes produced at its AEA facilities consistent with both DOE's AEA authorities and its responsibilities under RCRA.

If the rule proposed here today is adopted by DOE, its application will have the effect of leaving under the exclusive AEA regulatory scheme all DOE radioactive wastes currently stored or in the future to be stored in High Level Waste Tanks at DOE facilities. These wastes are regulated under a system of DOE Orders which require the proper storage and treatment of these wastes. Ultimately, all of these wastes are to be disposed of pursuant to other statutory schemes including the Energy Reorganization Act of 1974, the Department of Energy Organization Act, and the Nuclear Waste Policy Act. Other DOE radioactive hazardous wastes would either continue to be regulated under the exclusive AEA authority, if they are direct process wastes, or be regulated under both the AEA and RCRA authorities, if they are not.

IV. Invitation to Comment and Notice of Public Hearing

Interested persons are invited to submit written comments and recommendations to the address set forth at the beginning of this document. All comments or recommendations received on or before December 2, 1985 will be considered before the issuance of final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period in Room 1E-190, 1000 Independence Ave., SW., Washington, DC, 20585 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Pursuant to section 501 of the Department of Energy Organization Act the Department will provide an opportunity for oral presentation of views, data and arguments. Interested persons may request a public hearing by the date set forth above. If any requests for a public hearing are timely received, the Department will conduct a public hearing on November 13, 1985, at 9:00 a.m. in Room 1E-245, 1000 Independence Ave., SW., Washington, DC. If no requests for a hearing are received, the hearing will be cancelled. Procedural rules for the hearing will be announced at the commencement of the hearing.

V. Related Rulemaking

This proposed rule clarifies the jurisdictional basis for the application of RCRA to certain DOE wastes. The Environmental Protection Agency has proposed, or will shortly propose, rules under its RCRA authorities to govern other issues involved in RCRA's application to DOE facilities including issues of national security, state program consistency, protection of data and access to DOE facilities. Interested persons should also review that rulemaking in order to have an awareness of all of the issues involving RCRA application to DOE facilities.

VI. Procedural Matters

A. Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified major because they do not meet the criteria for major regulations established in that Order.

B. Regulatory Flexibility Act Certification

The regulations will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1980

There are no information collection requirements in the proposed rules.

List of Subjects in 10 CFR Part 962

Nuclear materials, Byproduct material.

Issued in Washington, DC, October 24, 1985.

J. Michael Farrell,
General Counsel.

In consideration of the foregoing, Part 962 of 10 CFR Chapter III is proposed to be added as set forth below.

Part 962 is added to 10 CFR Chapter II to read as follows:

PART 962—BYPRODUCT MATERIAL

Authority: The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*); Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*); Nuclear Waste Policy Act of 1982 (Pub. L. 97–425, 96 Stat. 2201).

§ 962.1 Scope.

This part applies to radioactive waste substances which are owned or produced by the Department of Energy at facilities owned or operated by the Department of Energy under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

§ 962.2 Purpose.

The purpose of this Part is to clarify the term Byproduct Material under section 11e(1) of the Atomic Energy Act (42 U.S.C. 2014(e)(1)) for use in determining the Department of Energy's obligations under the Resource Conservation and Recovery Act with regard to radioactive waste substances owned or produced by the Department of Energy pursuant to the exercise of its authority under the Atomic Energy Act of 1954, as amended. It does not affect the definition of Byproduct Material contained in section 11e(2) of the Act.

§ 962.3 Byproduct material.

For purposes of this part, the term Byproduct Material means a waste substance containing radioactivity that is either directly yielded in the process of producing or utilizing Special Nuclear Material as that term is defined in the Atomic Energy Act of 1954, as amended, or its being made radioactive is a direct and necessary consequence of that process.

[FR Doc. 85-26312 Filed 10-31-85; 10:53 am]
BILLING CODE 6450-01-M

federal register

Friday
November 1, 1985

Part VII

Department of Agriculture

Farmers Home Administration

7 CFR Part 1864 et al.

Special Supervision of Delinquent and Problem Case FmHA Farm Borrowers; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1864, 1872, 1900, 1910, 1924, 1941, 1943, 1945, 1950, 1951, 1955, 1960 and 1962

Special Supervision of Delinquent and Problem Case FmHA Farm Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its account servicing and supervision of delinquent and problem case FmHA farm borrowers' regulations. These amendments are necessary because of recent court decisions. The intended effect of these amendments is to set up a procedure substantially similar to that in the "Pretermination" package that was issued to FmHA field offices on December 20, 1983 (see 49 FR 470 published on January 4, 1984). The differences between the "Pretermination" package and the requirements of the amendments result from FmHA's experience using the "Pretermination" package. The amendments provide for notifying borrowers of various servicing alternatives, set standards for using the servicing alternatives and provide the opportunity for borrowers to assist FmHA field staff in planning the use of proceeds from the sale of security. FmHA borrowers in judicial foreclosure States are not affected by these amendments if FmHA has received a court decree authorizing liquidation of FmHA security. Borrowers who were sent *both* the "Pretermination" package and an acceleration notice before October 20, 1984, are not affected by these amendments; FmHA will proceed to liquidate its security.

EFFECTIVE DATE: Effective November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Edward Yaxley, Senior Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449-S, Washington, D.C. 20250, telephone (202) 447-3646.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, Farm Ownership Loans and Low Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operation Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." 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.

Paperwork Reduction Act

Under the Paperwork Reduction Act and 5 CFR 1320, the Farmers Home Administration has submitted the information collection requirements contained in this regulation for review by the Office of Management and Budget (OMB). The OMB has approved the information collection request and assigned OMB Control Nos. 0575-0061 and 0575-0111.

Background

The supervision and servicing of FmHA farm borrowers is governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. §§ 1921-1996). This action implements a procedure for deferring payments for farmer program borrowers to conform with 7 U.S.C. § 1981a and various court orders and establishes a method of informing farmer program borrowers of available servicing alternatives including deferral.

The effects of this proposed action are:

a. To comply with the various court orders.

b. To establish a new method to provide for loan deferrals to borrowers who do not have sufficient cash flow because of circumstances beyond their control.

c. To not consider FmHA borrowers who receive a loan deferral as delinquent. A maximum of five consecutive annual installments can be deferred with one deferral, which will strengthen borrowers' cash flow positions during the time needed to recover from devastating natural disasters or other conditions beyond a farmer's control, such as poor farming economy. A borrower who receives a deferral usually will have to wait two years after that deferral expires before another deferral can be considered.

On November 30, 1984, FmHA published in the Federal Register (49 FR 47007) a proposed rule giving interested parties until January 29, 1985, to submit comments.

Discussion of Comments Received

In response to the proposed rule 255 written comments were received. Seventy-eight of the comments were received after the January 29 deadline; however, all comments were considered in developing the final rule. Comments were received from individuals, FmHA employees, interest groups, United States Congressmen and State goverment officials. Two hundred eight of the comments were copies of four very similar letters. Eight areas of general comments are discussed under "A. General Comments".

Other comments are discussed under "B. Other Comments."

A. General Comments

1. Most respondents are concerned that the proposed changes will eliminate the priority of allowing FmHA borrowers to use proceeds from the sale of security for farm operating and family living expenses. Specifically, they are referring to the change in § 1962.17 of

Subpart A of Part 1962, which lists the purposes for which the proceeds may be used, the listed first purpose being to pay on the FmHA debt. This list does not establish any priorities for the use of farm income. Farm product sales proceeds can be released for *any* of the listed purposes, including planned operating and family living expenses. The changes in § 1962.17 explain how FmHA County Supervisors and borrowers will plan the use of proceeds at the beginning of each production year. An agreement will be signed which will identify the farm sales proceeds which will be used to repay FmHA and the proceeds which will be used for other items. This will increase the borrower's awareness of what FmHA expects the borrower to do with proceeds. Borrowers will be allowed to make changes to this plan during the year, with FmHA's approval. The elimination of a priority list gives County Supervisors the flexibility they need to treat each farmer as an individual when reaching an agreement on the use of proceeds. FmHA must be included as a recipient of some of the proceeds since FmHA will have made a loan which the borrower has promised to repay. FmHA, as a lender, expects payment from the sale of such security to protect the Government's interest. Therefore, the proposed amendment is adopted.

The following comments refer to the proposed rule of § 1951.44 of Subpart A of Part 1951:

2. Many of respondents are opposed to the condition in § 1951.44(b)(1)(i) which states that, to be considered for a deferral, a borrower must have a reduction of income within the 2 full calendar years immediately preceding the date of the request for a deferral which reduces the operation's cash flow to a point where outflows exceeds inflows. The respondents believed that such a condition would preclude borrowers who had a reduction of income prior to the two years, and who still do not have a positive cash flow, from requesting a deferral. We believe that this comment has merit. The rule is amended to require a reduction in income which causes the need for deferral. The rule is also amended to clarify the items the borrower must submit to FmHA to show the reduction in income.

3. A majority of the respondents commented that § 1951.44 of Subpart A of Part 1591 did not include "cost price squeeze" or poor economic conditions as acceptable reasons that were beyond the borrower's control which could make a borrower eligible for a deferral. They commented that low commodity prices, high interest rates, and unexpected increases in input costs are economic conditions which are beyond their control. We have changed this section to list some of the economic conditions which could make a borrower eligible for a deferral. We point out that the amendment includes a list of acceptable reasons for reduction of income; it is by no means an all-inclusive list.

4. A few respondents are opposed to the requirement that the need for a deferral be "temporary." The word "temporary" is from the authorizing statute, section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a). Thus, the Agency cannot change this language of the proposed rule.

5. A number of respondents object to the condition in § 1951.44(b)(5) that a borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors before receiving a deferral. The respondents believed this to be unduly harsh on suppliers, feed dealers and other creditors who expect full payment of debts in order to operate a viable business. FmHA, as a creditor, also expects full payment but has a responsibility to assist the borrower through a temporary period of reduced income with forebearance, in the form of a deferral. As long as the borrower's situation can improve, all creditors share that responsibility to assist borrowers through a time of financial difficulties for the benefit of the agricultural community. Many creditors may even improve their chances of debt collection because, if debt adjustment or rescheduling is not provided, the borrower may seek protection under the bankruptcy laws. Consequently, the proposed amendment is adopted.

6. Many respondents commented that it was unreasonble to expect that the borrower have paid, when due, expenses such as real estate taxes and insurance premiums, prior to receiving a deferral. They believed that conditions beyond their control may have prevented them from making such payments. We believe that many respondents may have misinterpreted the amendment. Section 1951.44(c)(3) states that the FmHA official must determine that the borrower, *before experiencing* the hardship, had paid, when due, all real estate taxes and property insurance premiums. A borrower who has been unable to pay taxes and insurance premiums due to the hardship is not barred from receiving a deferral. The proposed amendment is not changed.

7. Many respondents commented that FmHA should not cancel the special debt set-aside provided under § 1951.41 of Subpart A of Part 1951 when a borrower requests a deferral on the same loan. They went on to say that borrowers should be granted both a deferral and debt set-aside on their FmHA loans. We agree that borrowers should not have the debt set-aside cancelled when they request a deferral. However, the cancellation will occur when the deferral is *approved*. The wording of this section has been changed to make this clear. Both debt set-aside and deferral are servicing tools that provide relief to borrowers in the form of reduced payments. Consideration for such relief is sequential because debt set-aside requires payment of annual installments on the portion of the loan not set-aside while deferral requires no installment payments on the entire loan for 5 annual installments. Therefore, the borrower obtains greater relief if he/she qualifies for a deferral; cumulative benefits do not exceed those received with a deferral. However, a borrower may retain a debt set-aside on one loan and, if the borrower's cash flow worsens, obtain a deferral on other loan(s).

8. Many respondents commented that the proposed changes reduce the FmHA County Supervisor's responsibility to assist borrowers, and that FmHA is becoming "money oriented" rather than "people oriented." Although these comments refer to no particular amendment, FmHA believes that the comments are misdirected. The amendments requiring FmHA County Supervisors to plan with the borrower the use of proceeds for the production year will increase the County Supervisor's assistance. Moreover, the notification of servicing options, including deferral, as required in these amendments increases the assistance by County Supervisors. The proposed amendments are not in conflict with FmHA's purpose of providing supervised credit to its borrowers; however, FmHA has, as a credit agency, a responsibility to collect its loans.

B. Other Comments

Part 1872—Subpart A

The servicing of single family housing loans was removed from this Subpart with the publication of Subpart C of Part 1965 of this chapter, "Security Servicing for Single Family Rural Housing Loans."

Section 1872.1 General

This section is amended by adding the definition of farmer program loans.

Since no negative responses were received, the Agency adopts this amendment.

Section 1872.17 Liquidation action

Four respondents, including FmHA field office officials and special interest groups, commented that the amendment prohibiting the granting of time for voluntary liquidation after acceleration in Farmer Program cases was too harsh. they believed that FmHA could recover more if a voluntary liquidation were allowed. From the time the borrower receives a notice of intent to liquidate, the borrower has 150 days to voluntarily liquidate, if the borrower so chooses. This is ample time for a borrower, who is making a good faith effort, to voluntarily liquidate. One respondent commented that the last sentence of § 1872.17(f)(3) is unclear. The Agency inadvertently overlooked two sentences that were run together in the proposed amendment. This is corrected in the final rule. However, due to the removal of the housing program from this Subpart, it was necessary to reletter the paragraph.

Another respondent suggested that the language at the end of the first sentence of § 1872.17(e) be changed from "any other loan" to "any and all other loans" to ensure that the cumulative effect of liquidation on a borrower's repayment ability is determined before action is taken. The Agency concurs with the respondent and the amendment is changed to reflect that clarification. The same respondent suggested a change in wording in § 1872.17(f) to clarify the County Supervisor's responsibility in approving cash sales of FmHA secured real estate in cases where the secured debts will not be paid in full. The Agency agrees that the section needed to be clarified and the change in the amendment is made. However, it had to be relettered.

One agricultural interest group respondent commented that the amendment eliminates the requirement that the FmHA County Committee review liquidation cases before farmer program accounts are accelerated. The respondent believed that such a change removes from the liquidation process the only component of the FmHA chain of command that has a direct link with the borrowers and also reduces FmHA's responsiveness. The Agency points out that other amendments require that all servicing options be considered and curative actions taken prior to liquidation. After all options are exhausted and the problem has still not been resolved, the case must be liquidated. Therefore, it would serve no purpose for the County Committee to act on the case. The Agency chooses to adopt the proposed amendment.

Section 1872.18 Transfer of real estate security.

The amendments to this section provide for notifying farmer program borrowers of servicing options when they contemplate transferring their real estate security. Also, this section explains how interest that accrued during a deferral period must be handled when a transfer of real estate security takes place.

Once agricultural interest group respondent commented that parts of this section should be rewritten to encourage borrowers who choose to transfer their real estate to do so to eligible applicants. Such encouragement may help to sustain the Agency's mission of providing opportunities for family-sized farm operations, and may benefit the transferor. The Agency believes that this would impose an added burden on the borrower who decides to voluntarily liquidate the real estate. The way the regulation is written, the borrower who wants to voluntarily liquidate can sell the security, refinance the FmHA debt, convey the security to FmHA or transfer the security to either eligible or ineligible transferees. The Agency does not want to limit a borrower's choices as the respondent suggested.

No changes are made concerning the transfer of real estate and the proposed amendment is adopted.

The Agency adopts a change to the introductory paragraph of section 1872.18 to require the borrower be sent Form FmHA 1924-14 within 3 working days after inquiring about a transfer. The remainder of this proposed amendment to section 1872.18 is adopted.

Part 1900, Subpart B

Section 1900.51 General.

The change prohibits the termination of releases for certain family living and farm operating expenses until after the farmer program borrower has received the proper notice and any appeal has been concluded. No negative responses were received. The Agency adopts the proposed amendment.

Section 1900.52 Definitions.

FmHA added farmer program loans as a definition. Since no unfavorable comments were received, the Agency adopts the proposed amendment.

Section 1900.53 Decisions which are not appealable.

FmHA added a provision that borrowers who do not return Form FmHA 1924-26 or who complete Form FmHA 1924-26 indicating they do not wish to appeal cannot appeal when the adverse action is taken. Some language was deleted from the proposed change for the final rule. One USDA respondent recommended some minor changes in language in this section. However, the Agency chooses not to adopt such changes since the impact would be minimal. One attorney commented that appeal waiver notices may not be adequate in Forms FmHA 1924-25 and 1924-26, but could not tell because such forms were not published. FmHA provided copies of these forms to all parties who requested them and many of the comments received by FmHA resulted in changes being made to those forms. The notice is clear, unambiguous and adequate. We have amended Subpart B of Part 1924 of this chapter to include a description of the contents of the forms. The proposed amendment is adopted as changed.

Section 1900.55 FmHA actions to limit the need for appeals.

This change indicates that borrowers who receive Forms FmHA 1924-25 and 1924-26 will be, in most cases, required to attend a conference prior to the beginning of the appeals process. If the borrower does not attend such a conference, the appeal is waived. One respondent commented that additional language should be included in this section to clarify FmHA personnel's responsibilities regarding documentation and calculations in the case files. The Agency adopts these changes to the proposed rule.

Section 1900.56 Appeal from an initial FmHA decision.

This change provides further guidance on handling appeals of borrowers who receive Forms FmHA 1924-25 and 1924-26. One USDA respondent suggested changes that would not be consistent with the remainder of this Subpart. Therefore, the proposed amendment is adopted with minor changes to clarify the difference in handling farmer program and non-farmer program loans.

Exhibit B-1 was changed to strengthen the language for requiring a meeting and providing new information for consideration.

Exhibit B-2 was changed to add a statement for use of the letter to farm program borrowers who have been asked to graduate.

Exhibit B-3 was changed to add the word "conference" in the title and in the second sentence.

Exhibit B-4 was changed to delete a reference to chattel acceleration notices.

No negative comments were received; therefore, the proposed amendment is adopted unchanged.

Exhibit B-5 was changed to provide an exception on the use of the exhibit. No negative comments were received. The Agency adopts the proposed amendment.

Exhibit B-6 was added to be used to notify certain borrowers they had waived or forfeited their right to appeal.

Exhibit D was changed to clarify levels of review for certain decisions. The Agency changes the proposed amendment to include final rulemaking that was published in a previous final rule on June 7, 1985, for Subpart A, B and C of Part 1955 of this chapter.

Part 1910, Subpart A

Section 1910.4 Processing Applications

This change in the proposed rule required the removal of paragraph (b) from this section and *redesignate* the remaining paragraphs. In the proposed rule, paragraph (b) was mistakenly referred to as paragraph (h). However, paragraph (b) will not be removed in the final rule.

Paragraph (b) of § 1910.4 requires FmHA to send a guide letter concerning the limited resource program to a farmer program applicant before County Committee action is taken on the application. That will be retained. One respondent erroneously stated that paragraph (b) required the guide letter to be sent to all farmer program borrowers each November, and that eliminating this notification process violated the authorizing legislation. The Agency would like to point out that the November notification is required in 7 CFR Part 1924, Subpart B, § 1924.59(d). However, that change will be discussed in the narrative for Part 1924, Subpart B.

The proposed rule would have removed the notification required under paragraph (b) of § 1910.4(b) and replaced that notice with a Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals, and Borrower Responsibilities." That form is to be reviewed with FO, OL, SW and EM applicants and includes notification of the limited resource program as well as deferrals. However, one respondent stated that the review of that form is not early enough in the loan application process to allow applicants to develop plans using Limited Resource rates and terms. The Agency agrees and will not remove § 1910.4(b) so that applicants can use Limited Resource information in their plans. One respondent suggested that a list similar to the servicing options in Form FmHA 1924-14 be posted in all FmHA County Offices. The Agency believes that is not necessary and prefers giving actual notice of such options instead of posting a notice in County Offices.

Section 1910.8 Reaching an Understanding.

This change requires the use of Form FmHA 1924-14 in the application process to inform applicants of the availability of limited resource loans and servicing options, including deferrals. One respondent commented that, by using the form before or at loan closing, the notification would not be during the loan application process. The Agency believes the loan application process ends when the loan is closed. Therefore, if Form FmHA 1924-14 is given to applicants before or at loan closing, the notification is during the loan application process. Moreover, the Agency will retain applicant notification of the Limited Resource program under § 1910.4(b). The proposed rule is adopted.

Part 1924, Subpart B

Section 1924.51 General.

This change includes several farmer program loans under this subpart. There were no negative comments on this change; therefore, the Agency adopts this amendment.

§ 1924.56 Credit Counseling.

This change clarifies the County Supervisor's responsibilities to act in an advisory capacity when credit counseling applicants and borrowers. No negative comments were received. Minor changes were made in the proposed amendment by including conforming paragraph headlines.

Section 1924.57 Planning.

This change clarifies the borrower's and County Supervisor's responsibilities for performing planning and explains under what conditions such plans must be prepared. The annual plan was broadened to include both Form FmHA 431-2, "Farm and Home Plan," or other plan of operation acceptable to FmHA, and Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security." The latter form was designed to allow borrowers to formally participate in planning the use of proceeds in their operations; there will no longer be a priority list for use of proceeds.

As previously mentioned, a large number of respondents commented on the elimination of priorities for the use of proceeds in Part 1962, Subpart A, § 1962.17. They likewise did so for § 1924.57. As previously explained, FmHA clarifies the use of proceeds by initiating the use of Form FmHA 1962-1 which allows the borrower and FmHA to plan the use of proceeds for the coming year. Such uses include family living and farm operating expenses and payments to FmHA and other creditors. The Agency believes the use of this form will increase the borrower's awareness and understanding for what purpose the borrower's income can be used.

One agricultural interest group respondent commented that the use of Form FmHA 1962-1 formalizes the planning process and will make changes by borrowers more difficult to make. The respondent suggested that borrowers be made aware of the form's importance and that the Agency should create a new form to explain the mechanics of the form as well as other aspects of FmHA programs. The Agency has included an explanation of the use of Form FmHA 1962-1 on Form 1924-14, which is given to applicants and borrowers. The same respondent commented that both the borrower and FmHA County Supervisor should be required to initial and date major revisions to Form FmHA 1962-1, instead of only the borrower as stated on § 1924.57(d). The Agency agrees with this comment and has incorporated the change, along with other minor changes in language and additions, in the final rule.

Another respondent from USDA recommended that, in § 1924.57, the meaning of paragraph (c)(3), be clarified by replacing ". . . fully utilize plans developed, if any, with the assistance . . ." with ". . . fully utilize any plans developed with the assistance . . ." The Agency adopts this change to the proposed rule but also replaces "fully utilize" with "take into consideration." The same respondent recommended that "sufficient detail" in § 1924.57(d)(1) be further defined to provide clearer guidance to FmHA County Office staff. The Agency does not believe this is necessary as the Forms Manual Insert (FMI), referred to in § 1924.57(b) gives examples to the County Supervisor of the details required in the plan.

Other minor changes were made, such as requiring both Forms FmHA 431-2 and 1962-1 be completed at the same time and setting forth procedures for handling cases in which the borrower and County Supervisor do not agree on the entries on Form FmHA 1962-1.

Section 1924.58 Recordkeeping.

This change clarifies the responsibilities of both the borrower in keeping adequate records and the

County Supervisor in analyzing such records. No negative comments were received on this change; therefore, the Agency adopts the proposed amendment.

Section 1924.59 Supervision.

This change clarifies the County Supervisor's responsibility in supervising borrowers and in scheduling visits to borrower's farms. Such visits must be made to borrowers who have been indebted for less than one full crop year, who have been sent a notice of intent to take adverse action, who have had loans rescheduled, reamortized and/or consolidated, and who have limited resource loans. Two respondents commented that removing the requirement that the limited resource program notice be given to borrowers every November was in conflict with the authorizing legislation and should be reinstated. The Agency changes the amendment to include such notice be provided by sending Form FmHA 1924–14 to each borrower every November in paragraph (d) and to explain the contents of the form. That form will include notice of both the limited resource program and deferrals. One respondent recommended that §1924–59(c) be expanded to clarify information required to be recorded on farm visits, meetings and other contacts and the follow-up actions. Such a record will identify negative and positive findings and provide a timetable for completion of follow-up actions. The respondent also suggested that the words "handled properly" at the end of the second sentence of § 1924.59(d)(1) be replaced by "properly supervised." The Agency concurs with both recommendations and hereby changes the proposed rule. The remainder of the proposed amendment remains unchanged except for restructuring of paragraphing.

Section 1924.60 Analysis.

This change clarifies the purposes, uses and content of analyses of farm borrowers' operations. This allows County Supervisors to prepare for such analyses, to assist the borrowers and to monitor the borrowers' operations. The information obtained in analyses will assist the borrower in making financial and production management decisions. One respondent from USDA made four different recommendations for changes that would clarify the meaning in several paragraphs. In § 1924.60(a), it was suggested that revisions be made to pinpoint the purposes of analyses and to identify the borrower's and County Supervisor's responsibilities in preparing and updating the analyses. In § 1924.60(c)(1), it was suggested that the words "adjusted to" be replaced by "predict."

It was suggested that, in § 1924.60(d)(2) that ". . . which jeopardize their repayment ability" be added to the end of the paragraph. In § 1924.60(d)(4) it was recommended that "until the County Supervisor determines the borrower is conducting the operations satisfactorily" be replaced by "until the County Supervisor determines the borrower is operating the enterprise within reasonable conformity to plans and prescribed goals." The Agency does not concur with the suggestions and believes the proposed language is adequate with minor revisions.

Section 1924.61 Nonfarm enterprises.

This section was unchanged from the existing regulation. No negative comments were received; therefore, this action remains unchanged.

Section 1924.62 State Supplements.

One respondent offered two comments on clarifying language in this section. In § 1924.62(a), it was suggested that "area" be replaced by "topic." It was suggested also that § 1924.62(c) be revised to require that standards for key farm management and financial management practices be kept current in the County Office and be made available to borrowers. This section is condensed in the final rule and requires that such practices be kept current in the County Offices. Also, the State Supplements issued to field offices should set the time of year for conducting analyses.

Section 1924.71 Delinquent borrowers.

This change requires that farmer program borrowers who are $100 or more delinquent on their FmHA loan accounts as of December 31 (rather than March 31 as originally proposed) will be sent a notice of FmHA's intent to accelerate and liquidate their accounts. This would provide a definite standard for accelerating loan accounts. Eleven respondents offered negative comments on this change. Eight respondents from FmHA field offices suggested that the March 31 date does not allow sufficient time for borrowers to bring their account current after the January 1 due date and for County Offices to complete annual analyses for the borrowers' previous crop year. They believe that determining appropriate servicing actions, such as rescheduling, reamortization and deferrals cannot be done by March 31. Alternative dates suggested were June 30 and September 30. Also seven respondents believed that $100 was too low of an amount of delinquency to initiate liquidation. One respondent suggests that a percentage of a borrower's annual installment be used. It was believed that borrowers with small delinquencies would be agitated by receiving such a notice of intent. One agricultural special interest group respondent suggested that, due to a potential for backlog after sending notices to delinquent borrowers, the Agency wait one full year before adopting this proposed rule.

After further analysis, the Agency changed the date to December 31. This will allow the borrower almost a full year to make the annual installment. It will also reduce the number of intent to take adverse action notices sent out and allow the borrower and the County Supervisor more time to consider other options such as rescheduling and deferral.

The $100 figure is used so that there will be a consistent clear-cut standard for County Supervisors which would eliminate any capricious liquidation decisions. Increasing the amount may create an incentive for borrowers to maintain a level of delinquency without concern that any action could be taken against them to enforce the covenants of the FmHA security instruments. Farmers who have delinquencies and who are able to bring their accounts current should do so. Farmers who cannot bring their accounts current should be considered for servicing relief immediately. The regulations make it clear that FmHA will take action quickly so that small delinquencies do not grow into large ones.

The Agency agrees with postponing the use of the notice for delinquent borrowers. The notification will be effective December 31, 1985. The remainder of the proposed amendment is adopted.

Section 1924.72 Borrowers who receive Form FmHA 1924–25 and 1924–26.

This change sets forth the actions County Supervisors must take after borrowers receive Forms FmHA 1924–25 and 1924–26. When borrowers do not respond to the forms, the County Supervisor will continue with the intended adverse action. In other cases, the County Supervisor will be processing requests for servicing actions, attending appeal hearings or considering curative or liquidation actions after the borrower returns the acknowledgement form, Form FmHA 1924–26.

Two respondents offered comments on this proposed change. One respondent from USDA suggested that § 1924.72(e) (redesignated as paragraph (f) in final rule) be changed to allow borrowers who return incorrectly completed acknowledgement forms the full 30 day response period in which to correct deficiencies, rather than 10 days as set forth in the proposed rule. They also suggested that "within 10 days" be clarified as to "calendar" or "working" days. The Agency concurs with the recommendations and thereby changes the proposed rule.

An agricultural interest group respondent suggested that "60 days" be increased to "120 days" in § 1924.71(d). They believed that this would be a reasonable period of time to allow the borrower to complete the action the borrower chose on the acknowledgement form, such as selling or transferring real estate. The Agency concurs and hereby adopts the change to the proposed amendment as well as the addition of subheadings in this section. The Agency also added the description of the contents of the forms.

Section 1924.73 Follow-up supervisory actions by District Director and State office staff.

This change sets forth the oversight system for proper monitoring of supervisory actions taken by County Supervisors. One respondent suggested that results of visits by District Directors to County Offices be documented regarding the County Supervisor's management of the loan portfolio and that copies of the results be given to the County Supervisor and State Director. The Agency is of the opinion that other FmHA regulations concerning internal control require sufficient reporting documents. Therefore, the proposed rule is adopted.

Part 1941, Subpart A

Section 1941.18 Rates and terms.

This change removes deferral as a loan making action to avoid confusion with deferral as a loan servicing action. Loans may have reduced installments scheduled in the beginning of the repayment term. The requirement for an annual review of limited resource loans at the time of conducting an analysis has been added to the final rule.

Part 1943, Subpart A

Section 1943.18 Rates and terms.

This change removes deferral as a loan making action to avoid confusion with deferral as a loan servicing action. Language was added so that loans may have reduced annual installments scheduled of at least partial interest for the first 5 years.

Also, the requirement for an annual review of limited resource loans at the time an analysis is conducted was added to the final rule.

Part 1943, Subpart B

Section 1943.68 Rates and terms.

This change removes deferral as a loan making action to avoid confusion with deferral as a loan servicing action. Language was added to indicate that reduced payments can be scheduled. No negative comments were received on this amendment; therefore, the proposed amendment is adopted as changed.

Part 1943, Subpart C

Section 1943.118 Rates and terms.

This change was made to remove deferrals as a loan making action to avoid confusion with deferral used as a servicing action. Language was added to indicate that reduced payments can be scheduled. The proposed rule is adopted as changed.

Part 1945, Subpart D

Section 1945.168 Rates and terms.

This change was made to remove deferral as a loan making action to avoid confusion with deferral used as a loan servicing action. One respondent commented on language in § 1945.168(b) that was not a part of the proposed change. Language has been added to the proposed rule to show that reduced installments can be scheduled annually for the first 5 years. Also the last sentence of § 1945.168(b)(1)(i) is removed to correct a previous error.

Part 1951, Subpart A

Section 1951.1 Purpose.

This change includes several Farmer Program loans for servicing in this Subpart. No negative comments were received; therefore, the proposed rule is adopted unchanged, except to include a reference to servicing loans on Predetermined Amortization Schedule System (PASS).

Section 1951.7 Accounts of borrowers.

These changes were made to delete use of payment reminders as farmer program delinquency notices and to provide a reference to Part 1924, Subpart B, for subsequent servicing of loans when a farmer program borrower fails to make a payment. Also, a change was made to update references to forms and other regulations.

One respondent from a special interest group commented that this amendment should include provisions for notifying borrowers of dates and amounts of payments due. Also, the respondent suggested that County Supervisors be required to notify borrowers of how and when payments are applied to existing debts. The Agency cannot adopt such changes at this time due to changes being proposed and made in the automated data processing systems in the central Finance Office. Progress is being made to include all FmHA County offices on the system, which will eventually provide increased information for borrowers on payment application. The Agency adopts this proposed rule unchanged, except that, in paragraph (d), servicing farmer program loans has been clarified and differentiated from other FmHA loans and (b)(2) was removed as new regulations will have to be issued for off-sets on Federal employee wages.

Section 1951.8 Types of payments.

This change cross-references to a definition of the term "farm income." Also, the sources of extra payments are claimed in the light of the definition of "farm income." A reference to Part 1962, Subpart A, is added for the definition of farm income. No negative comments were received.

Section 1951.10 Application of Payments on Operating (OL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO) loans to individuals, Soil and Water Conservation (SW) coded "24", and other production type loan accounts.

The priority of application of income to accounts is amended to show that payments must be applied first to interest accrued during a deferral period. On respondent commented that this section be amended to clarify which FmHA employees are responsible for various steps in the payment process. Other sections of this Subpart, which were not affected by the proposed changes, deal with employee responsibilities and were not published. Therefore, the Agency believes no changes are required. The Agency has removed a subsection in § 1951.10 (b) that is no longer needed and adopts the proposed amendment.

Section 1951.11 Application of payments on real estate accounts.

These changes revise the priority of application of payments on real estate accounts so that payments are applied to interest accrued during a deferral period before interest accrued to the date of payment and then principal. No negative comments were received on these changes. To avoid repetition, the Agency did eliminate the reference to the priority of payments in § 1951.11(a)(2) because the same priority list is included in § 1951.11(d)(1)(i). The proposed amendment is adopted as changed.

Section 1951.25 Review of limited resource FO and OL loans.

This change deletes a reference to an increase in FO limited resource rates. No negative comments were received on this change. However, the Agency proposed to adopt further changes to this section to require an annual review of limited resource loans. The Agency believes that this is feasible because limited resource borrowers receive analyses every year at which time financial information is obtained and repayment ability is determined. The limited resource interest rate is increased by whole number increments in accordance with the borrower's repayment ability until the current interest rate is reached. The automatic interest rate increase provision was removed as this had expired. Also, borrowers who have received a deferral cannot have the interest rate of their limited resource loans increased during a deferral period. That change is required to conform with Finance Office requirements.

Section 1951.33 Consolidation and rescheduling of OL, SL, EO, and EM and EE loans made for Subtitle B purposes.

These changes remove deferral as a servicing action from this section. The deferral action was placed under § 1951.44. Also, several farmer program loan programs, heretofore excluded from this section, were added. No negative comments were received on these changes. Therefore, the Agency adopted the proposed amendment with minor changes, such as prohibiting the consolidation of deferred limited resource loans during the deferral period and allowing rescheduling or consolidating to be performed any number of times on any loan.

Section 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.

These changes remove deferral as a servicing action from this section and add several farmer program loans that were previously excluded. Having received no negative comments, the Agency adopts this proposed amendment with minor changes including prohibiting deferred limited resource loans from being reamortized during the deferral period, conforming general requirements with those for rescheduling and consolidation under § 1951.33 of this part, and clarifying reamortization of limited resource loans.

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RFH and EE loans.

This section is added so that the eligibility requirements for and processing of deferrals could be explained in detail. Some general comments on this proposed change were addressed earlier in this document and the changes noted. Other respondents provided more specific comments which will now be addressed. One special interest group respondent commented that poor financial management decisions, such as untimely marketing practices, should not be excluded as a reason not to be considered for deferral. They believed that things such as untimely marketing are hard to control. The Agency realizes this; however, borrowers who are withholding grain or livestock from markets in anticipation of higher prices should not receive deferrals if they receive low prices because they held the commodities too long. Such speculation may cause a reduction in income and, if the borrower received a deferral, may be a disincentive for borrowers to use good marketing practices. The Agency chooses not to adopt this change.

Another respondent, from a USDA office, recommended that more specific items be required from the borrower to determine need for a deferral. Such items included death certificates, letters of employment termination, certificates of cost, etc. The Agency believes that requiring such items would place an unnecessary burden on the borrowers. The most necessary items, such as financial records, income tax records, etc., will provide the most accurate documentation of the borrower's financial position that indicates a need for deferral. The Agency chooses not to adopt this comment. This respondent also suggested that clarification be made in the proposed rules to show that subsequent deferrals must at least meet the criteria for an initial deferral. The Agency agrees and hereby adds the word "initial" to the first sentence of § 1951.44(f)(1) so that it reads ". . . meets the conditions for an initial deferral."

This respondent also recommended that a maximum term be stated in "5 years" instead of "5 installments." The Agency believes that clarification is necessary and hereby changes § 1951.44(i) to 5 *annual* installments. Finally, this respondent commented that expenditures for repairing security property that FmHA has determined not essential to the operation should not be considered to be "beyond the borrower's control." The Agency agrees that this language is not clear. The non-essentiality refers only to required insurance coverage. Therefore, § 1951.44(b)(1)(ii)(B) is changed to reflect the insurance requirements.

Another agricultural interest group commented that the eligibility requirement for a deferral which states that the borrower must have applied "recommended and recognized successful production and financial management practices" is too subjective. The Agency believes that including very specific management practices would be too cumbersome and may, in fact, limit eligibility for a deferral. Also, subjective determinations made without adequate documentation are controlled through the administrative appeal process. The Agency chooses not to adopt this suggested change.

One FmHA field office respondent believes that FmHA should be adequately secured before a deferral could be granted. The respondent also commented that the proposed rule did not address the losses that the Agency could incur because of deferrals. The Agency believes that conditions beyond a borrower's control that lead to a need for a deferral may adversely affect security value and borrowers should not be penalized for such declines in value. Also, security value may recover during the deferral period. Potential losses should not be addressed in a servicing regulation. The Agency is not making any changes in response to these comments.

One attorney and a State Attorney General commented that notice of deferral to borrowers is not adequate to comply with one of the judge's orders. The Agency believes that more notices are provided under these proposed rules than what was required. One respondent further commented that the notices are placed throughout regulations and are difficult to locate, unlike the rural housing moratorium regulations, and the deferral regulation is not based on the rural housing moratorium regulation. FmHA's farmer programs operate under many more regulations than rural housing programs and the notices of deferral are logically placed in the appropriate farmer program regulations. Also, the Agency believes that the deferral standards are more suited to farmer programs loans than the rural housing moratorium standards. Some requirements, such as standards for subsequent relief, are similar. Both respondents offered comments on eligibility for deferrals that are similar to those comments addressed earlier. The attorney commented on the cancellation of deferrals, indicating that some of the reasons for which deferrals will be cancelled are vague. The cancellation of deferrals has been removed from the final amendment. This respondent went on to criticize the requirement that loans must be rescheduled and/or reamortized before deferral is granted. The respondent believed that would result in an increase in interest rates in virtually all cases. This is not true. Loans may be rescheduled or reamortized at the current or original note interest rates, whichever is lesser. Borrowers will not be penalized with higher interest rates. Finally, this respondent commented that deferral rights are not provided in acceleration notices, contrary to the Court's ruling. Reference to deferrals is made in the farmer program acceleration notices, the same as the reference to moratorium is made in the housing acceleration notice.

The Agency has added a statement to the Addendum for Deferred Interest under § 1951.44(j). That statement requires the borrower to sign a Supplementary Payment Agreement if, during the deferral period, the borrower has a substantial increase in income and can make additional payments. Finally, recoverable cost item accounts do not have to be current when a deferral is granted because such accounts cannot be rescheduled.

Considering the above, the Agency adopts this proposed amendment with noted changes.

The Agency is publishing the complete regulation for Subpart A of Part 1951 of this chapter for administrative convenience in issuing the regulation to its field offices. §§ 1951.2 through 5, 9, 12 through 24, 26 through 32, 34 through 39, and 41 through 43 remain unchanged from previous publications except to correct punctuation and form numbers previously overlooked. The interim rule titled, "Special Debt Set-Aside of a Portion of the Indebtedness of Farmer Program Borrowers," (§ 1951.41) published on October 19, 1984, FR Vol. 49, No. 204, pages 41220 through 41223, received several comments during the allowed 30 day period. Those comments will not be addressed in this publication. The Agency needs more time to evaluate the program.

Part 1951, Subpart F

Section 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

This change provides appeal rights to farmer program borrowers who did not comply with FmHA's graduation requirements. One respondent commented that the changes regarding appeals were confusing. The Agency amended the proposed rule so that more appropriate notification is given and to include a reference to Part 1900, Subpart B, for handling appeals.

Part 1955, Subpart A

This Subpart was revised for a final rule after the publication of this proposed rule. The proposed amendments are incorporated into this subpart and do not present significant changes. The comments received are addressed where appropriate.

Section 1955.3 Definitions.

This change includes rural housing loans for farm service buildings in the definition of farmer program loans. No negative comments were received; therefore, this change is adopted.

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

This change indicates that voluntary conveyances from a farmer program borrower cannot be accepted until the borrower has been sent Form FmHA 1924–14. Also, a change was made to require Form FmHA 1924–26 be in the case file, properly executed by the borrower, in cases where the borrower decides to volutarily convey after receiving Form FmHA 1924–25. No negative comments were received. Language has been added to further define voluntary conveyance and to prohibit FmHA from demanding a voluntary conveyance from a borrower.

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

This change requires that farmer program borrowers receive Forms FmHA 1924–14, 1924–25 and 1924–26 before foreclosure action is initiated; to include references to Exhibits D and E as acceleration notices for farmer program borrowers; to indicate that farmer program borrowers do not receive the name of hearing officers on the acceleration notice; to require that non-farmer program loans and farmer program loans, if both are secured by the same security, be accelerated; and to prohibit the authorization of time for voluntary liquidation in farmer program cases after acceleration. One special interest group commented that borrowers should be given the opportunity to cure monetary and nonmonetary defaults for 60 days prior to acceleration when such borrowers have been denied servicing options. The Agency believes that borrowers have sufficient time to cure defaults prior to appeal hearings, if they choose to do so. Also, borrowers may make offers to cure defaults until foreclosure is completed. However, such offers must be approved by the State Director. The Agency chooses not to adopt this comment. One FmHA field office pointed out two conflicts with other Subparts that should be changed in the proposed rule. However, the recent publication of a revision of this subpart has eliminated such conflicts. Also added to this change was the requirement that both chattel and real estate secured loans be accelerated at the same time.

Section 1955.20 Acquisition of chattel property.

This change was added to the final FmHA rule to require that farmer program borrowers receive Form FmHA 1924–14 before FmHA can accept a voluntary conveyance.

Part 1962, Subpart A

Section 1962.2 Policy.

This change includes the requirement that Forms FmHA 1924–14, 1924–25 and 1924–26 be used prior to liquidating security for farmer program loans. No negative comments were received on this change. However, the Agency wished to modify the proposed rule to remove this paragraph as this informatin is now included in other Subparts of the regulation. The proposed rule is adopted with this change.

Section 1962.3 Authorities and responsibilities.

Paragraph (c) was added to this section to provide an exception authority for the provisions or requirements of Part 1962, Subpart B. The authority is given to the Administrator who will determine if such exceptions can be made, based on the recommendations of the FmHA State Director. No negative comments were received on this change; therefore, the Agency adopts this proposed rule.

Section 1962.4 Definitions.

This change adds a definition of borrower to include corporations, cooperatives and partnerships; broadens the definition of chattel security; includes the definitions of farm income, which is proceeds from the sale of chattel security; security, which also means chattel security; and farmer program loans. No negative comments were received on this proposed rule. However, the Agency is including a change to § 1962.4(f)(7) to make it clear that minor deviations from FmHA regulations committed by borrowers should be referred to the Office of the Inspector General in order to protect the

Government's interest. Also included is the definition of Farmer Program loans. Therefore, the proposed amendment as changed is adopted.

Section 1962.16 Accounting by County Supervisor.

This change sets forth the use of Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," which requires the borrower and the FmHA County Supervisor to plan the use of proceeds for the coming year so that a clear understanding of such uses is established. This allows borrowers an increased participation in determining the use of proceeds. One respondent from a federal Agency believed that internal control is not sufficient to assure security property is accounted for. FmHA believes that the use of Form FmHA 1962-1 will provide greater control over accounting for security. That form, along with security agreement, will be updated during the year when borrowers make dispositions of security, thereby increasing accountability by the borrower. The Agency chooses not to make any change as a result of this comment. However, the Agency does adopt changes that will require changes on Form FmHA 1962-1 to be initialed by the borrower and the FmHA County Supervisor, will require the County Supervisor to approve or disapprove dispositions on Form FmHA 1962-1, will require the borrower to list potential purchasers of chattel security, and will refer employes to §§ 1962.18 and 1962.49 of Subpart A of Part 1962 for direction on dealing with unapproved dispositions of security. The Agency adopts this proposed rule so changed.

Section 1962.17 Disposition of chattel security, use of proceeds and release of lien.

This change sets forth the conditions under which the disposition of chattel security may be made, the handling of the use of proceeds and the process whereby changes can be made to Form FmHA 1962-1. Also, the proceeding of the release of chattel security was clarified. This discussion previously addressed the numerous comments relating to the removal of the priority list for the use of proceeds. Another respondent, from the USDA, commented that language in § 1962.17(b)(2)(ii) should be strengthened to indicate that, in cases where the security property is exchanged or traded, FmHA's relative lien position be maintained. The Agency concurs and the proposed rule is so changed. The same respondent, plus another respondent from an agricultural interest group, believed that a range in deviation from planned proceeds be included so that small variations be excluded from the reporting requirements imposed on the borrower. The Agency believes that allowing any deviations provides an opportunity for borrowers to be negligent in using proceeds properly and reporting such deviations. Small deviations may lead to large deviations. Therefore, this comment is not adopted. Another agricultural interest group respondent suggested that the requirement that new plans on Forms FmHA 1962-1 and 431-2 be developed when changes in the disposition of security occur is too burdensome and that revisions to existing plans should be allowed. The Agency concurs and the change to the proposed rule is made. Other changes to the proposed rule are made to require the FmHA County Supervisor to approve or not approve dispositions and to record changes on Form FmHA 1962-1, to require the automatic termination of releases when the borrower's accounts are accelerated but not prior to that time, to set forth the conditions on Form FmHA 1962-1 the borrower must meet, and to allow plans of operation similar to farm and home plans to be used by the borrower. The proposed rule is adopted as changed.

Section 1962.18 Unapproved disposition of chattel security.

This change sets forth the notice that must be given to borrowers when proceeds have not been accounted for and the method of reporting such unapproved dispositions to the FmHA State Office. The Office of Inspector General (OIG) and the Office of the General Counsel (OGC) are informed if the borrower does not make restitution. Such cases are handled as criminal actions under § 1962.49 of Subpart A of Part 1962. Logs on unapproved disposition must be maintained by County Office and forwarded to State Officers, who then forward the logs to the Regional OIG, on a quarterly basis. The Office of Investigation (OI) made a number of comments on this proposed rule. The OI believes that a borrower counseling statement should be adopted for use when borrowers made unauthorized dispositions of security. Such a statement would set forth the borrower's responsibilities. The Agency believes that Form FmHA 1962-1 sets forth such responsibilities and the use of this form signed by the borrowers provides adequate accountability. It was also recommended that first offenses be reported on the log. The Agency chooses not to make this change because of the possibility the borrower made an honest mistake. Subsequent offenses will be reported. Also, it was recommended that unauthorized dispositions above a minimum value be reported to avoid a large number of reportings. The Agency believes that, after the first offense, all unapproved dispositions of security must be reported to avoid the possibility of giving borrowers the incentive to make repeated small dispositions and to establish culpability. This comment is not adopted, as well as the comment that the "Unapproved Disposition of Security Log" be changed to "Borrower Counseling Log." The name change is not necessary as the counseling takes place before the dispositions are made.

Comments by OI that the Agency are adopting include reporting of unapproved dispositions, and keeping borrowers names on logs for two years instead of one year. These changes require other changes such as clarifying how to put new entries on the log and requiring the State Offices to also maintain a log. Also changed is requiring the log to be forwarded by the County Supervisor to OIG on a quarterly basis. The proposed amendment is adopted as changed.

Section 1962.26 Correcting errors in security instruments.

This change was added to update a reference for Form FmHA 462-12.

Section 1962.28 Assignment of notes and security instruments.

This change was added to remove this section from the regulation as it is obsolete.

Section 1962.34 Transfer of chattel security and EO property and assumption of debts.

This change requires sending Form FmHA 1924-14 to borrowers who inquire about making a transfer of chattels so that they are aware of servicing options and requires that any deferred interest be paid prior to an assumption of the FmHA debt on new terms. No negative comments were received on this proposed rule. It is adopted unchanged except to delete an obsolete interest rate for limited resource loans, and to add that any unassumed debt exceeding $25,000 must be approved by the Administrator prior to release of liability.

Section 1962.40 Liquidation.

This change requires notice to borrowers on Form FmHA 1924-14, 1924-25, and 1924-26 prior to liquidation taking place. Those forms provide the borrowers a means of applying for other servicing options or appealing the intent to liquidate. Also, changed is reference to Exhibits D and E of Subpart A of Part

1955 for accelerating accounts. Also the change separates voluntary and involuntary liquidation to clarify the difference. No negative comments were received on this proposed amendment. The Agency adopts this amendment as changed.

Section 1962.41 Sale of chattel security or EO property by borrowers.

This change provides for giving the borrower Form FmHA 1924-14 before the sale occurs and using revised Form FmHA 455-3, "Agreement for Sales by Borrower (Chattel and/or Real Estate)." It also provides for the borrower to voluntarily turn over the possession of chattels to the government and for the government to hire a caretaker by use of Form FmHA 120-10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice." The Agency adopts the amendment as changed.

Section 1962.42 Repossession, care and sale of chattel security or EO property by the County Supervisor.

This change requires that borrowers receive Forms FmHA 1924-14, 1924-25 and 1924-26 prior to repossessing that borrower's chattel security.

It also provides for the handling of security abandoned by the borrower. There were no negative comments. The Agency adopts the proposed amendment with changes that require the cosigners of loans, if any, receive Forms FmHA 1924-14, 1924-25, and 1924-26 prior to repossession and clarifies the handling of cases in which the borrower abandons the FmHA security.

Section 1962.43 Liquidation of chattel security or EO property by other parties.

This change deletes the provision that FmHA consider foreclosure in cases where junior lienholders are foreclosing. The FmHA will inform such lienholders of FmHA's security interest and the borrower's indebtedness and that a sale of any security is subject to FmHA's lien. There were no comments on this proposed amendment; therefore, it is adopted.

Section 1962.47 Bankruptcy and insolvency.

This change requires that prior notice on Forms FmHA 1924-14, 1924-25 and 1924-26 will be sent to the borrower's attorney when FmHA learns that either a chapter 7, 11 or 13 bankruptcy proceeding has been filed. Also sent is a guide letter which explains that the automatic stay must be lifted, the proceedings dismissed or the debt reaffirmed before the borrower can request servicing options on Form FmHA 1924-26. This proposed amendment rule is adopted as changed.

Section 1962.48 [Removed].

This change was not commented on. The Agency hereby removes and reserves this section on setoffs.

Section 1962.49 Civil and criminal cases.

The proposed amendment requires Forms FmHA 1924-25 and 1924-26 be sent to borrowers prior to collection actions being taken in civil and criminal cases; to include a reference to Exhibits D or E of Subpart A of Part 1955 for acceleration of accounts; to remove reference to obsolete Form FmHA 455-21, to include District Office actions, to state that the period of time in which to take civil or criminal action is set by law, and to clarify information required to be sent to OGC for action. No negative comments were received on this proposed amendment. However, the Agency wishes to adopt changes to eliminate the use of Forms FmHA 1924-25 and 1924-26 because other methods of notifying borrowers of collection are used in this section. Also, this section was revised to clarify the referral of cases to OIG for criminal investigation. The proposed amendment is adopted as changed.

The Agency is publishing the complete regulation for Subpart A of Part 1962 of this chapter for administrative convenience in issuing the regulation to its field offices. Section 1962.5 through 9; 12 through 14; 19; 26; 27; 29; 30; 44; 45 and 46 remain unchanged from previous publications except to correct punctuation and form numbers previously overlooked and to allow plans of operation similar to farm and home plans be used by borrowers wherever a reference to farm and home plan is made.

Miscellaneous Revisions

Several additions are made to this final rule.

1. *7 CFR Part 1951, Subpart L* was published as a proposed rule in 49 FR 101, May 23, 1984, and is added to this final rule. The proposed rule set forth the administrative requirements for handling farmer program loans or other financial assistance that were determined by the Agency or the Office of the Inspector General to have been unauthorized. The borrowers of such loans are placed on notice that the unauthorized assistance must be repaid, regardless of whether the borrowers or FmHA was at fault in obtaining or providing the unauthorized assistance. Servicing options and account adjustments may be considered in lieu of liquidation. No negative comments were received on the proposed amendment. However, the Agency is adopting changes to include, in § 1951.558, a cross reference to 7 CFR Part 1955, Subpart A, § 1955.10 for handling voluntary conveyances from borrowers whose cases cannot be handled with the use of servicing options or account adjustments. Such borrowers will not receive Forms FmHA 1924-14, 1924-25, and 1924-26 as required in § 1955.10. Also, borrowers who take no action to correct the unauthorized assistance or do not appeal will have their accounts accelerated in accordance with 7 CFR Part 1955, Subpart A, § 1955.16 without being given appeal rights or being sent Forms FmHA 1924-14, 1924-25, and 1924-26.

2. *7 CFR Part 1864.* This part sets forth policies and procedures for settling FmHA debts. A definition of Farmer Program Loans was included and § 1864.2 (C) and (D) are retitled and revised for clarification. The Agency adopts the amendment as changed.

3. *7 CFR Part 1872.* Other revisions to this part have been previously discussed. The Agency is adding § 1872.20 to this part which sets forth the servicing of non-program loans which are loans that result when credit is extended to ineligible applicants and/or transferees in connection with sale of inventory properties and loan assumptions. The Agency's regulations dealing with such loans were inadequate. The addition of this section will remove such inadequacies and provide direction that is consistent with past Agency practices and policies. The Agency also added revisions to §§ 1872.2 and 3 which add references to Subpart A of Part 1955 of this chapter and to remove references to RH loans.

4. *7 CFR Part 1950, Subpart C.* This subpart sets forth policies for servicing FmHA loans of borrowers who have entered or who are entering military service. This regulation had been overlooked when the proposed amendments were published and the agency hereby adopts changes in sections 1950.102, 1950.103 and 1950.104. These changes separate the servicing of farmer program and non-farmer program loans owed by borrowers in the military.

5. Other changes were made to include form revisions that were issued since the proposed rulemaking was published. These changes have no bearing on the content or intent of the amendments.

A number of comments were received recommending changes that did not pertain to the proposed changes. Such recommendations will be taken under consideration when the applicable Subparts are revised and published for proposed rulemaking. Also, one agricultural interest group made recommendations on Forms FmHA 1924-14, 1924-25 and 1924-26 which were not published for proposed rulemaking. The Agency concurs with some of the recommendations on the forms and has adopted some changes.

List of Subjects

7 CFR Part 1864

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1900

Appeals, Credit, Loan programs—Agriculture.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture.

7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1950

Accounting, Loan programs—Agriculture—Military personnel.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1960

Credit, Loan programs—Agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 is revised to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 31 USC 3711; 7 CFR 2.23; 7 CFR 2.70.

2. In Section 1864.2, paragraphs (a)(5) and (a)(6) are redesignated as (a)(6) and (a)(7), a new paragraph (a)(5) is added and paragraphs (c) and (d) are revised to read as follows:

§ 1864.2 General policies.

(a) * * *

(5) "Farmer program loans" means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing loans for farm service buildings (RHF).

* * * * *

(c) *Disposition of property.* Ordinarily, all security and nonsecurity property which was purchased or refinanced with loan funds will have been disposed of before processing a debt settlement action. Security and nonsecurity property which was purchased or refinanced with loan funds can be retained only under the conditions specified in § 1864.3(a)(2) or § 1864.5(a)(1) of this part.

(d) *Negotiating the settlement.* After all security has been disposed of or after the conditions of § 1864.3(a)(2) or § 1864.5(a)(1) of this part have been met, the County Supervisor should obtain from the borrower information concerning the borrower's financial condition. Enough information must be obtained so that either Form FHA 456-1, "Application for Settlement of Indebtedness," or Form FHA 456-2, "Cancellation or Charge-Off of FmHA Indebtedness," can be completed. All of these factors which are pertinent to determining ability to pay will be discussed with the borrower to arrive at the proper type and terms of a settlement. Present and future repayment ability, the factors mentioned in this part, and any other pertinent information will be the basis for determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to accurately forecast the borrower's future repayment ability over a long period of time; consequently, the period of time during which payments on adjustment offers are to be made should not, except in unusual cases, exceed 3 years. If a borrower's income is derived from sources which do not appear to be stable, it may be preferable to consider a compromise offer in a lesser amount than an adjustment offer payable over a period of time. Likewise, it may be preferable to consider an adjustment offer in a smaller amount providing for larger payments over a shorter period of time, rather than an adjustment offer providing for a larger total payment over a longer period of time but with smaller payments. Borrowers may, however, make compromise or adjustment offers in any amount. All offers should be considered and processed, but an adjustment offer will not be approved unless there is reasonable assurance that the borrower will be able to make the payments as they become due. Since County Supervisors have no authority to approve debt settlement actions, they will make no statements to borrowers concerning the action that may be taken on their applications.

* * * * *

PART 1872—REAL ESTATE SECURITY

3. The authority citation for Part 1872 is revised to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

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

4. In § 1872.1, a sentence is added to the end of paragraph (g) to read as follows:

§ 1872.1 General.

* * * * *

(g) *Definitions.* * * * "Farmer program loans" means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

5. In § 1872.2 paragraph (b)(4) is revised to read as follows:

§ 1872.2 Preservation of security property and protection of liens.

* * * * *

(b) * * *

(4) *Maintenance.* In abandonment and pending liquidation cases, the State Director may authorize emergency repairs necessary to protect the interest of the FmHA. In all other cases, complete information concerning the borrower's failure to adequately maintain the security property and the

State Director's recommendation for continuing the loan will be submitted to the National Office for prior authorization to advance funds for needed repairs. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

* * * * *

6. In § 1872.3, paragraph (a) is revised to read as follows:

§ 1872.3 Subordination of FmHA mortgage to permit refinancing, extension, reamortization, increase in amount of existing prior lien, or to permit a prior lien.

(a) *Reamortizing Existing FmHA Debts.* Existing FmHA loans may be reamortized to permit a loan of another lender in lieu of a subsequent loan of the kind involved with prior approval of the District Director or State Director as applicable. Authority to reamortize an account will be granted when it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. When a loan is reamortized, it will be processed in accordance with applicable program regulations. Section 1872.20(b)(2) of this subpart should be referred to if an NP loan is involved.

* * * * *

7. In § 1872.4 the introductory paragraph is revised to read as follows:

§ 1872.4 Consent by partial release, subordination, or otherwise to sale or other disposition of portion of or interest in security, except leases.

The consent of FmHA or other lienholders may be in the form of a partial release, subordination, or other form of written consent, depending on the circumstances. If an NP loan is involved, § 1872.20(b) of this subpart also applies. The consent authorized herein is applicable to the disposition of security, or an interest in the security, rather than to a release of security granted to a mortgagor upon reduction of the debt from regular or other personal funds. A formal release may not be delivered for 15 days after the payment is received unless such payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notifcation to the requesting party that the release is available.

* * * * *

8. In § 1872.8 the introductory paragraph and paragraph (a)(1)(i) are revised as follows:

§ 1872.8 Consent to borrower's granting lease of security.

When consent to a lease is required by the security instruments and a borrower requests FmHA's consent to lease all or a portion of the security, or the County Supervisor discovers that a borrower is leasing the security without consent, Form FmHA 465-1 will be prepared when the County Supervisor recommends approval of the lease. That form will show the terms of the proposed lease and will specify the use of proceeds including any proceeds to be released to the borrower. When another lienholder's mortgage requires consent to lease, this consent will be obtained as provided in § 1872.1(f) of this subpart. FmHA consent to the lease may be granted on the basis of the situation at the time of the proposed action when: the lease or its terms will not adversely affect the repayment of the loan or the Government's rights under the mortgage; leasing is not an alternative to, or means of, delaying liquidation action, the operation of all or a portion of the security under the lease will not adversely affect any applicable crop allotments, the lease and use of any proceeds will further the objectives of the loan, liquidation is not pending and rental income sufficient to make regular payments under the note, pay taxes and insurance, and maintain the security assigned to FmHA for these purposes unless such payments are otherwise reasonably assured, the lease is advantageous to the borrower and is not to the Government's disadvantage, and if foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions by the OGC. In cases where the borrower leases property without consent and consent may not be granted in accordance with the above provisions, or when further approval of a lease cannot be granted in accordance with the conditions of the paragraph, the case will be serviced promptly in accordance with § 1872.17 of this subpart unless the borrower corrects the violation. If an NP loan is involved, § 1872.20(b) of this subpart also applies. Consent to lease will be subject to the additional conditions specified below for each kind of lease:

(a) * * *

(1) * * *

(i) *RH Loans on farms, or SW or RL.* For the purpose of this paragraph, leases for an annual term with option to the lessor to renew for a longer term and to cancel at least at the end of each year will be considered annual leases. The FmHA will reserve the right to withdraw the consent at the end of any year should liquidation or other servicing action be required by FmHA.

* * * * *

9. Section 1872.17 is revised to read as follows:

§ 1872.17 Liquidation action.

(a) *Voluntary Liquidation.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can be accomplished by: (1) selling the security under paragraph (e) of this section, (2) transferring the security under § 1872.18 of this subpart, (3) conveying the security to the Government under Subpart A of Part 1955 of this chapter, or (4) refinancing the FmHA debt with another lender. The provisions of these regulations will be explained to the borrower. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA secured debt and any prior lien do not exceed $100,000, the County Supervisor will establish the present market value of the security. Otherwise, the County Supervisor will obtain the concurrence of the District Director if the secured debt is less than $180,000 and the concurrence of the State Director if the secured debt exceeds $180,000.

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under policy stated in § 1872.1(b) of this subpart, liquidation of the account(s) will be accomplished as expeditiously as possible. In farmer program cases, borrowers must receive Form FmHA 1924-14, "Notice-Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any of the following actions can be taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account immediately by (i) selling the security under paragraph (e) of this section, (ii) transferring the security under § 1872.18 of this subpart, (iii) conveying the

security to the government under Subpart A of Part 1955 of this chapter, or (iv) refinancing the FmHA debt with another lender, the borrower is allowed 120 days to accomplish such action after the borrower has indicated the action to be taken on Form FmHA 1924–26 and has returned the form to the County Supervisor. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA secured debt and any prior lien do not exceed $100,000, the County Supervisor will establish the present market value of the security. Otherwise, the County Supervisor will obtain the concurrence of the District Director if the secured debt is less than $160,000 and the concurrence of the State Director if the secured debts exceeds $160,000.

(2) *Problem Case Report.* If the borrower is unwilling to take any of the actions specified in paragraph (b)(1) of this section or fails to carry out any such actions within the time set out in that paragraph, the County Supervisor will complete Form FmHA 1955–2 and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter.

(3) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

(4) *Voluntary liquidation after acceleration.* Granting time for voluntary liquidation after acceleration is not authorized for farmer program loan accounts.

(5) *Multiple loans and loans secured by both real estate and chattels.* When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purposes of other FmHA loans, all FmHA loans should be liquidated. If a borrower has a loan(s) secured only by real estate and other loan(s) secured only by chattels *or* if a borrower has a loan(s) secured by both real estate and chattels, liquidation of real estate and chattel security will be started at the same time. Chattel security will be liquidated under Subpart A or Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattels and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1872.18 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924–25.

(c) *Operation of the security or personal occupancy.* A borrower with farmer program loan(s) who without FmHA's consent does not personally operate the farm or recreational facility is violating agreements with FmHA. After complying with the requirements of paragraph (b) of this section pertaining to notices and appeals, such a borrower's account will be accelerated in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(d) *Accelerated repayment agreement.* When liquidation of the account is necessary because of failure to refinance or for other reasons and the remaining loan repayment period exceeds ten years for real estate loans or two years for OL and EM loans, the State Director may, in-lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. Farmer program loan borrowers must be sent Form FmHA 1924–14 before an accelerated repayment agreement is signed. For real estate loans other than RH loans on nonfarm tracts, the term of the agreement will not exceed ten years. For OL, EM, and RH nonfarm loans, the terms of the agreement will not exceed five years. In either case, the balance of the debt will be scheduled for repayment in equal annual or monthly amortized installments of combined principal and interest, except that, if annual payments are required, the first installment may be less than a full amortized installment if it is due substantially less than a full year after the date of the agreement and the borrower will not be able to pay the full amount. Interest will be at the rate shown in the note. The State Director will determine that authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest and (1) the borrower can reasonably be expected to meet the accelerated payments, and (2) the borrower will continue to comply with other requirements of the loans and security instruments. When an understanding is reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be completed and executed. Separate Forms FmHA 1965–11 will be used for each type of loan and for direct or insured loans. If the borrower fails to meet any installment when due as provided in such an agreement, foreclosure action will be initiated and accounts accelerated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter.

(e) *Cash sale.* Before any cash sale takes place, farmer program loan borrowers must be sent Form FmHA 1924–14. If a cash sale of mortgaged real estate would result in less than full payment of secured debts, the County Supervisor is authorized in accordance with § 1872.17(a) of this subpart to approve the sale at not less than the present market value of the property and to release the Government's liens, provided:

(1) Substantial recovery. A substantial recovery can be made on the FmHA secured indebtedness based on a recent appraisal report showing the present market value of the property.

(2) Application. All the proceeds are applied on the mortage debts in accordance with their respective priorities except authorized costs as specified in § 1872.4(c)(2) of this subpart.

(3) Release. The FmHA liens are not released by the County Supervisor until receipt of the appropriate sale proceeds for application on the Government's claim. The release will be made on forms approved or prepared by OGC. If is appears the debt will not be paid in full, the borrower will be sent Form FmHA 455–3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)," and the debt will be considered for debt settlement. The case will be reclassified to "collection-only" when a judgment will not be obtained and if the debt cannot be settled, and if the requirements of FmHA Instruction 404.1 (available in any FmHA office) concerning, "Case Classifications," can be met. When a cause is reclassified to collection-only, Form FmHA 404–1, "Case Reclassification" and Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office.

(f) *Environmental requirements.* Any applicable requirements of Subpart G or Part 1940 of this chapter must be met.

10. In § 1872.18, the introductory paragraph, paragraphs (b)(1), (b)(7), (b)(8), (b)(14), (b)(17), the introductory text of paragrah (c), paragraphs (c)(2)(i), (c)(2)(ii); (e), (g)(1), and the table and explanations in paragraph (g)(1), (g)(2)(iii), (g)(2)(iv) and paragraph (g)(3), are revised and (b)(19) and (f)(4) are added as follows:

§ 1872.18 Transfer of real estate security.

When the mortages requires the consent of the FmHA to any proposed sale or other transfer of real estate security for FmHA loans, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Form FmHA 1924-14 within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If the proposed sale would not result in the FmHA account being paid in full at the time of the sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1872.4 or 1872.17 of this subpart, as appropriate. When the transferor is receiving a substantial downpayment in connection with the sale of the property, the purchaser should be required to contact other sources of credit to secure a loan for repayment of the FmHA loan in full. If an NP loan is involved, § 1972.20(b)(5) of his subpart also applies. When real estate security, including water rights, is sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate paragraphs of this subpart, the account will be liquidated as required in § 1872.17 of this subpart.

* * * * *

(b) * * *

(1) *Agreement.* Form FmHA 465-5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferee. This agreement will not be completed for farmer program loan borrowers until the borrower has received Form FmHA 1924-14

* * * * *

(7) *Loan type.* The kind(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as Non Program Loans (NP).

(8) *Transfer of a portion of the security.* Generally, title to all FmHA real estate security, including water rights, must be conveyed to the transferee not later than the date of closing the transfer. However, a transfer of a portion of the FmHA real estate security with an assumption of the total indebtedness may be approved, provided: (i) The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower of such indebtedness is reduced by a cash payment to the present market value of such property, (ii) the transaction is advantageous to the Government, and (iii) in the case of RH loans, the property improved with RH funds is conveyed to the person assuming the RH loan. In such a transaction, the security retained by the transferor will be released from the Government's lien.

* * * * *

(14) *Loans.* An initial or subsequent loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay equity. When real estate security for an RH loan is transferred to a person eligible under Subpart A of Part 1944 of this chapter for an RH loan to purchase such real estate, RH loan funds may be used to pay the equity. This, however, does not include income-producing land or buildings. In lieu of the subsequent loan of the kind involved, the Government's lien may be subordinated to (i) enable the transferor to take a first mortgage to secure the amount of the equity payment, of (ii) to permit another lender to furnish the funds needed in connection with the transfer. In such cases, the subordination will be processed in accordance with the applicable provisions of § 1872.3 of this subpart. The transferor may convey title to the property by warranty deed or, when the transferor agrees to take a first lien to secure the downpayment, the property may be sold by purchase contract or similar instrument that meets the conditions or § 1943.16(a)(3) of Subpart A of Part 1943 of this chapter. In such cases, prior lienholders' agreements will be obtained in accordance with § 1807.2(f)(5) of Part 1807 of this chapter. When necessary to settle a divorce action, a subsequent loan may be made or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property.

* * * * *

(17) *Date.* The effective date of the transfer will be the actual date the transfer is closed. This is the date on which Forms FmHA 460-5 or 460-9 are signed. In connection with the use of either form, the unpaid principal balance and accrued interest will be shown in Table 1 and the accrued interest will be computed from Form FmHA 451-26, "Transaction Record," Form FmHA 451-31, "Borrower Transaction Record," or the monthly payment account Status Report. If Form FmHA 460-9 is used, the transferee will be informed of the amount of principal and interest owed. The transferee also will be advised of the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period and any accounts that must be paid to bring any monthly payments up to date.

* * * * *

(19) *Environmental requirements.* Applicable provisions of Subpart G of Part 1940 of this chapter must be met.

(c) *Transfer of loans to eligible applicants.*

(2) * * *

(i) *Form FmHA 460-9.* Except as noted below for RH loans, assumption of any FmHA loan may be approved without any change in the balance owed, interest rate, or other terms. In such cases, Form FmHA 460-9 will be used. A loan may be transferred even though it is on schedule, ahead of schedule, or behind schedule. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under § 1951.44 of Subpart A of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be placed on new rates and terms by using Form FmHA 460-5.

(A) Rural Housing Disaster (RHD) loans will be transferred at the current rate for Section 502 loans unless the transferee is eligible for a RHD loan.

(B) Direct Sections 502, 503, and direct Senior Citizen RH loans will be transferred at the current rate for Section 502 loans.

(C) Low and moderate RH loans transferred to a person having an above-moderate income will be transferred at the current rate for an above-moderate Section 502 loan.

(ii) *Form FmHA 460-5.* If an extension of the existing loan repayment period is necessary to enable the transferee to be successful, or if interest accrued during a deferral period is not paid in full at the time of transfer, Form FmHA 460-5 will be used. The new repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, and RH—33 years. If a new repayment period is used, the current interest rate for a new loan of the type involved will be used and any insurance charge applicable to such a loan will be provided for, except in assumptions by a surviving spouse under § 1872.18(b)(4). In determining the new repayment period and interest rate, (A) an NP loan will be considered an FO or RH loan as appropriate, if the applicant and the property meet the requirements of § 1872.18(c)(1), and (B) an SL or other emergency-type loans no longer being made will be considered an EM loan.

* * * * *

(e) *Consent of FmHA not required to transfer.* Even in cases where the FmHA mortgage(s) does not require the Government's consent to the sale of the security, if the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with § 1872.18 (c) or (d), the Government will not consent to the sale.

(1) *Sections 502 and 504 RH loans.* In such cases, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default, and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the borrower and otherwise serviced in the usual manner.

(2) *Farmer program loans.* The borrows will be sent Form FmHA 1924-14.

(f) * * *

(4) When the total outstanding debt is not assumed, a farmer program loan borrower who is not being released from liability must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office).

(g) * * *

(1) *Refund of Unused Funds, Loan Funds Not Advanced, Transaction Record.* Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, RH, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any obligation of or request for loan funds not yet advanced will be cancelled. Form FmHA 451-26, or the monthly payment account Status Report will be used to compute the unpaid balance due on the effective date of the transfer.

(2) * * *

(iii) * * *

FmHA form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
*1940-1	Request for Obligation of Funds	[3] 3	2-O and C [*]	2-O and C	1-C.
*400-4	Nondiscrimination Agreement	2	1-O	1-O	1-C.
*410-1	Application for FmHA Services, (with attachments).	[*] 1	1-O	1-O	
*410-4	Application for Rural Housing Assistance (Non Farm Tract).	[*] 1		1	
*1910-5	Request for Verification of Employment	1			
*465-5 [5]	Transfer of Real Estate Security	3	1-O	1-O	1-C.
*440-2	County Committee Certification or Recommendation.	1		1-O	
*431-2 [1]	Farm and Home Plan	1	1-O	1-C	In record book.
*431-1	Long-Time Farm and Home Plan	2	2-O and C	1-C	1-O.
*431-3 [1]	Household Financial Statement and Budget.	2	1-O	1-C	1-O.
*431-4 [1]	Business Analysis-Nonagricultural Enterprise.	2	2-O and C [*]	1-C	1-O.
*422-1	Appraisal Report (Farm Tract)	1		1-O	
*422-3	Map of Property	1		1-O	
*1922-8	Residential Appraisal Report	1		1-O	
*1940-21	Environmental Assessment for Class I Actions.	1		1-O	
*1940-22	Environmental Checklist for Categorical Exculsions.	1		1-O	
*424-1	Development Plan	2	1-O	2-O and C	1-C.
*426-1	Valuation of Building	1		1-O	1-C.
*440-9	Supplementary Payment Agreement	2	1-O	2-O and C	1-C.
*460-5 [1]	Assumption Agreement (New Terms)	4	1-O	1-O	1-C.
*460-9 [1]	Assumption Agreement (Same Terms-Eligible Transferee).	4	1-O	1-O	1-C.
*465-8 [2]	Release From Personal Liability	2		1-C	1-C.
*443-17	Agreement to Sell Nonessential Real Estate.	2	2-O and C	1-C	1-C.
*1924-14	Notice-Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities.	2		1-C	1-C.
*1924-25	Notice of Intent to Take Adverse Action	2		1-C	1-O.
*1924-26	Borrower Acknowledgement of Notice to Take Adverse Action.	1		1-O	
*1940-41 [5]	Truth in Lending Disclosure Statement	2	1-C	1-C	1-O.
*1940-43 [4]	Notice of Right to Cancel	3	1*	*1	2-O and C.
*451-10	Request for Statement of Account	3		2-O and C (O to FC).	
*451-25	Status of Account	2		2-O and C	
*1960-6	Assumption Agreement	[2] [9]	1-C		
*1965-22	Information on Assumption on New Terms or Other. Change of Terms	2		1-O	
*1965-23	Supplemental Information on Assumption and/or. Change of Terms	2		1-O	

O—Original; C—Copy.

*—When applicable.

[1] In addition to plan for first full year, interim plan, if prepared, will be included in the docket.

[2] The original Form will not be executed until date of closing the transfer.

[3] In right to cancel cases, original and sufficient copies for each person who has right to cancel in accordance with Subpart I of Part 1940 of this chapter.

[4] Original and one copy to transferee, two copies to each other person who has right to cancel in accordance with Subpart I of Part 1940 of this chapter. If the person exercises the right to cancel, he/she will sign one copy of the form and return it to the County Office.

[5] When requested, prepare an additional copy for delivery to transferor.

[6] Applicant must sign and date this form unless a similar certification is obtained on the application form.

[7] For eligible transferees, delete the first sentence referring to other credit in item 34 of the form. The deletion will be initialed by the applicant.

[8] For ineligible transferees, delete the first sentence in the applicant's certification (item 23 on the Form FmHA 410-1 or item 12 on the Form FmHA 410-4) which refers to other credit. The deletion will be initialed by the applicant.

[9] Original to Finance Office.

(iv) *Other transfer docket items when applicable:* Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and co-signer(s). When the County Supervisor is the approving official he/she may, in lieu of including the document evidencing ownership, include a statement in the docket indicating that he/she has seen and reviewed the document. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA 451-26 will be forwarded to the County Office. This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, he/she should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

* * * * *

11. § 1872.20 is added to read as follows:

§ 1872.20 Servicing non-program loans (NP).

(a) *Definition.* A non-program loan results when credits are extended to ineligible applicants and/or transferees in connection with sale of inventory properties and loan assumptions.

(b) *Servicing authorities.* (1) Except as set out in the following paragraphs, debtors to FmHA with NP loans are not eligible to receive any program benefits including supervision and servicing. Such benefits include limited resource interest rates, reamortization, rescheduling, consolidation, deferral, and appeal rights.

(2) Subordination of FmHA NP loan mortgages may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien *only* when the security for the NP loan is also the security for another FmHA Insured Farmer Program type loan and the request for the subordination meets all the requirements for the subordination of the other FmHA Insured Farmer Program type loan and is in the best interest of the government. Such actions can only be approved by the State Director.

(3) Any consent by partial release, subordination or other agreement involving road rights of way, gas line easements, utility line easements, mineral right easements or leases, other leases, etc. may be approved providing that the funds received are applied to the liens in order of priority. Such actions can only be approved by the State Director.

(4) Voluntary conveyance of security for NP loans will only be considered when it is clearly in the best interest of the government. The debtor will not be released from liability for any FmHA debt that exceeds the value of the security plus any additional cost which might result in a charge to the government such as closing cost and maintenance of the security property. Such actions can only be approved by the State Director.

(5) NP loans will be transferred to an FmHA applicant unless the security and the transferee meet the requirements for an OL or FO loan as applicable. In such cases the transfer will be processed the same as on the OL or FO loan being transferred to an eligible applicant. EM and EE loans will *not* be transferred as an NP loan to eligible OL or FO transferees.

(6) When an NP loan debtor is in default of the loan and/or security instruments and the default cannot be corrected in a reasonable period of time (usually less than 1 year), the account will be accelerated by the use of Exhibits D and E of subpart A of Part 1955 (available in any FmHA Office). Exhibit D will be completed in accordance with the FMI to delete the statement regarding deferrals. If the borrower has not cured the default within the time provided in the acceleration notice, FmHA will proceed with the foreclosure as set forth in Subpart A of Part 1955 of this chapter, without further notice or any extension of time.

(7) Any borrower having NP debts and farmer program loans will be serviced in accordance with the regulation applicable to those loans.

§ 1872.22 [Reserved]

12. § 1872.22 is removed and reserved.

PART 1900—GENERAL

13. The authority citation for Part 1900 is revised to read as follows:

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

Subpart B—Farmers Home Administration Appeal Procedure

14. In § 1900.51, two sentences are added at the end of the text as follows:

§ 1900.51 General.

* * * * *

* * * FmHA officials may not deny or delay approved assistance pending the outcome of an appeal of a partial adverse action. For farmer borrowers with farmer program loans as defined in § 1900.52(d) of this subpart, releases for certain family living and farm operating expenses cannot be terminated until the borrower has received Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," in accordance with Subpart A of Part 1862 of this chapter and any appeal has been concluded *and* Exhibit D or E to Subpart A of Part 1955 of this chapter has been sent to the borrower.

15. Section 1900.52 is amended by redesignating paragraphs (d) through (g) as (e) through (h) and adding a new paragraph (d) to read as follows:

§ 1900.52 Definitions.

* * * * *

(d) *Farmer Program Loans* means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), and Special Livestock (SL) Loans and/or Rural Housing loans for farm service buildings (RHF).

* * * * *

16. Section 1900.53 is amended by redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) and by adding a new paragraph (a)(15) to read as follows:

§ 1900.53 Decisions which are not appealable.

(a) * * *

(15) Nonprogram loan debtors are not eligible to receive any program benefits such as appeal rights as provided in § 1872.20(b)(1) Part 1872 of this chapter (FmHA Instruction 465.1XXB1).

* * * * *

(f) If a borrower fails to return Form FmHA 1924–26 on time, or if the borrower completes Form FmHA 1924–26 to show that no appeal is requested, the borrower will be sent Exhibit B–6 and FmHA will take the adverse action.

* * * * *

17. Section 1900.55 is amended by revising paragraphs (a), (b), and (c) and adding new paragraphs (d) and (e) to read as follows:

§ 1900.55 FmHA actions to limit the need for appeals.

* * * * *

(a) FmHA personnel should carefully check that all documentation and/or calculations used in the determination to initiate adverse actions are accurate and complete.

(b) The specific reasons for intended adverse actions should be clearly explained to the applicant or borrower. Vague reasons should be avoided. For example, avoid "you lack repayment ability." Calculations and documentation which demonstrate the lack of repayment ability shall be provided and explained to the borrower or applicant.

(c) Except for farmer program loan borrowers who are sent Forms FmHA 1924–25 and 1924–26, a meeting must be held between the affected parties and the decisionmaker to explain the adverse decision before the appeals process will begin. The required meeting may be waived by the decisionmaker if the decisionmaker previously met with or advised the affected parties of the specific reasons for the denial or the decisionmaker determines that a meeting would likely not avoid an appeal. The decision maker will document in the affected party's file the reason for deciding to waive the meeting. In such cases, Exhibit B–2 with attachment Exhibit B–4 will be used without revision, except in cases involving acceleration of accounts which are provided for in § 1900.56(a) of this subpart. When a meeting is required, Exhibit B–1 will be used without revision to inform the appellant. If the appellant or appellant's representative [or legal counsel] without good cause, fails to schedule/attend this meeting, there will be no appeal.

(d) Farmer program loan borrowers who are sent Form FmHA 1924–25 and who complete Part I, III or IV or Form FmHA 1924–26 are entitled to a conference with the decisionmaker before the appeals process begins. The conference cannot be waived by the decisionmaker. If the borrower or the borrower's representative fails to attend the conference without having a reasonable excuse or if the borrower fails to bring the information requested, the borrower will be sent Exhibit B–6 and there will be no appeal of the intended adverse action.

(e) When the person or organization officials attend a meeting or conference with the decisionmaking official and the meeting or conference results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting or conference, setting forth the conclusions reached. If the meeting or conference does not result in a resolution of the matter, Exhibit B–5 with attachment and Exhibit B–4 will be sent without revision to notify the person or organization of appeal rights within 7 calendar days of the meeting or conference. If the person or organization has returned Form FmHA 1926–26 indicating no appeal is desired, Exhibit B–6 will be sent.

18. In § 1900.56, paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (b), (c), (d), and (e); a new paragraph (a) is added, the introductory paragraph of newly designated paragraph (b) and paragraphs (b)(3) and (d)(2) are revised, and paragraph (b)(5) is added to read as follows:

§ 1900.56 Appeal from an initial FmHA decision.

(a) Farmer program loan borrowers who are sent Forms FmHA 1924–25 and 1924–26 (in accordance with Part 1872, Subpart B of Part 1924, Subpart A of Part 1962, or Subpart C of Part 1950 of this chapter) are given an opportunity to appeal before the adverse action is taken unless Part II–D or Part III or IV of Form FmHA 1924–26 was completed. If an appeal is taken and the decision to take adverse action is upheld, the final letter upholding the initial decision will contain the following statement:

> This review concludes the administrative appeal of your case. FmHA will proceed to take the adverse action noted on Form FmHA 1924–25, "Notice of Intent to Take Adverse Action." You are not entitled to any further appeal in connection with the adverse action.

(b) If an applicant for FmHA assistance, an FmHA borrower (except those farmer program loan borrowers who are sent Forms FmHA 1924–25 and 1924–26), or an FmHA grantee is directly and adversely affected by an FmHA decision or action, the official taking action or making the decision will inform that person or oganization by letter of the action taken within 15 calendar days of the action. The term "directly and adversely affected" means having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, canceled, or not renewed. Letters, as indicated in § 1900.53 or § 1900.55 of this subpart, as appropriate, will be used to notify the applicant. The following actions will also be taken if the adverse action is an acceleration of an FmHA loan:

* * * * *

(3) Except for farmer program loan acceleration notices, the letter will read substantially as found in Exhibit B or C, "Notice of Acceleration . . .," of Subpart A, Part 1955 of this Chapter with attachment Exhibit B–4 or B–5 as appropriate. The following language, or other similar language mandated by FmHA regulations, must be included in the acceleration notice: "The request for this hearing must be made within 30 calendar days from the date of this notice." Farmer program loan accounts will be accelerated after all appeals have been concluded by sending either Exhibit D or E of Subpart A, Part 1955 of this chapter, as appropriate.

* * * * *

(5) When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan(s), the non-farmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924–25. One appeal hearing and one review will be held jointly for both adverse actions. The hearing officer and review officer will be the people designated in Exhibit D of this subpart as further explained by footnote 5 of that Exhibit.

* * * * *

(d) * * *

(2) If the appellant has made a request to examine or copy the FmHA material concerning the case, except where the acceleration of a loan secured by real estate is involved, the material (unless privileged) will be made available to the appellant or the appellant's representative [or legal counsel at the FmHA decision maker's office for 10 calendar days following the receipt of the request for appeal. When a real estate loan acceleration is involved, and the appellant has made a request to examine or copy the FmHA material concerning the case, the hearing officer will arrange for the file (other than privileged material) to be available in the servicing office for a reasonable period of time. An FmHA employee should ensure that no material is

destroyed or removed from the files. The decision maker will then submit the request for hearing with the complete file to the hearing officer.

* * * * *

19. Exhibit B–1 to Subpart B of Part 1900 is amended by revising the first paragraph to read as follows:

Exhibit B–1 to Subpart B—Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision is Appealable

* * * * *

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are canceling/reducing the assistance you are presently receiving]. The specific reasons for our decision are: (Insert here the adverse decision and all of the specific reasons for the adverse action.) If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you must request a meeting with (this office) (the County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative (or legal counsel) with you. Should we be unable to satisfactorily resolve your case, you will be advised of your appeal rights and how to begin the appeal process. If without good cause, you fail to schedule or attend this meeting, there will be no further appeal.

* * * * *

20. Exhibit B–2 to Subpart B of Part 1900 is amended by revising the first sentence and by adding a footnote to read as follows:

Exhibit B–2 to Subpart B—Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision is Appealable

* * * * *

After careful consideration, FmHA [was unable to approve your application/request for service] [is canceling/reducing the assistance you are presently receiving] [is planning to accelerate and liquidate your account(s)] [1]

* * * * *

21. Exhibit B–3 to Subpart B of Part 1900 is amended by revising the title and the second sentence in the first paragraph to read as follows:

Exhibit B–3 to Subpart B—Letter for Notifying Applicants and Borrowers of Unfavorable Decision Reached at the Pre-Hearing Meeting or Conference.

* * * * *

* * * We regret that our [meeting] [conference] with you did not result in a satisfactory conclusion.

* * * * *

[1] Used only for Farmer Program graduation.

Exhibit B–4 to Subpart B—Appeals of Adverse Actions [Amended]

22. Exhibit B–4 to Subpart B of Part 1900 is amended by revising the opening parenthetical statement now reading "(Use as an Attachment to Exhibit B–2, B–3, and Chattel Acceleration Notices, as Applicable)" to read "Use as an Attachment to Exhibits B–2 and B–3)."

Exhibit B–5 to Subpart B—Appeals of Real Estate Acceleration [Amended]

23. Exhibit B–5 to Subpart B of Part 1900 is amended by revising the opening parenthetical statement now reading "(Use of an Attachment to Real Estate Acceleration Notices)" to read "(Use as an attachment to Real Estate Acceleration Notices Except Farmer Program Loan Accelerations)."

24. Exhibit B–6 is added to Subpart B of Part 1900 to read as follows:

Exhibit B–6 to Subpart B of Part 1900—Letter for Notifying Borrowers, Who Received Form FmHA 1924–25 But Who Have Waived or Forfeited Their Appeal Rights

U.S. Department of Agriculture

Farmers Home Administration

[Insert Address]

[Date]

Dear ———

You were sent Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and attachments, on (date). You have (waived) (forfeited) your opportunity for an appeal hearing concerning the adverse action the Farmers Home Administration intends to take as indicated on Form FmHA 1924–25 because

[you failed to return Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to take Adverse Action," in response to Form FmHA 1924–25 during the time period provided.]

[you] [your representative] failed to attend the conference scheduled on (date) in response to your request on Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," without having a reasonable excuse.]

[you failed to bring the information requested on Form FmHA 1924–25 to the conference held on (date).]

[you indicated on Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," you did not wish to appeal.]

This is notice that FmHA is proceeding to take adverse action shown on Form FmHA 1924–25. You will receive no further appeal rights in connection with this adverse action.

Sincerely,

(County Supervisor)

25. Exhibit D to Subpart B of Part 1900 is revised to read as follows:

Exhibit D to Subpart B—Hearing/Review Officers Designation

Decisionmaker or decision	Hearing Officer	Review officer
County Supervisor	District Director from another district or a person of equal or greater rank not involved in the case designeted by the State Director.	State Director or designee (who has not been significantly involved with the case).
County Committee	State Director or designee.	Deputy Administrator, Program Operations or designee.
District Director	State Director or designee.	Deputy Administrator, Program Operations or designee.
State Director	Deputy Administrator, Program Operations or designee.	(No review).
Division Director or Assistant Administrator.	Deputy Administrator, Program Operations or designee.	(No review).
Deputy or Associate Administrator.	Administrator or designee.	(No review).
Intent to foreclose Chattels.	District Director from another district or a person of equal or greater rank not involved in the initial decision designated by the State Director.	State Director or designee.
Intent to foreclose Real Estate (for Farmer Program Loans).	District Director from another district or a person of equal or greater rank not involved in the initial decision designated by State Director.	State Director or designee.
Decision to foreclose Real Estate (for Single-Family Housing accounts).	State Director or designee [1].	Deputy Administrator, Program Operations, or designee.
(For accounts serviced in the District Office).	Deputy Administrator, Program Operations or designee.	(No review).

[1] The individual designated as Hearing Officer may not be an employee who is supervised by the person who approved the foreclosure and accelerated the account, nor can be designee have been involved in the decision to foreclose.

Notes

1. District Director also means Assistant District Director or District Loan Specialist.

2. County Supervisor also means Assistant County Supervisor with loan approval authority.

3. Designee is the person designated by the Hearing/Review Officer to conduct a hearing or review. The designee signs the decision letter to the appellant without the concurrence of the original Hearing/Review Officer except:

a. For hearing on County Committee decisions. For these hearings the State

Director or Acting State Director may designate other persons to act on his or her behalf in conducting the hearing; however, the State Director or Acting State Director must sign the hearing decision letter.

b. When the Hearing/Review Officer, designated by the Deputy Administrator, Program Operations, is not a member of the National Office staff, the complete case file, hearing notes, tape recordings, and a recommended decision will be sent to the Deputy Administrator, for review and a final decision.

c. When the Hearing/Review Officer is a member of the National Office staff, after the decision is written, but prior to notification of the applicant, in all cases requiring corrective actions or training (e.g., reversals or other problems which may become evident) the Hearing/Review Officer will brief the Deputy Administrator, Program Operatons, concerning the decision and will notify the State Director involved that the decision will be reversed or modified, and will advise the State Director of what corrective action will have to be taken.

4. For decisions not directly covered above, the Hearing/Review Officer is the person in the next higher level of FmHA authority.

5. When a hearing involves both the action on Form FmHA 1924-25 and any other loan acceleration, the appeal process will follow that for the decision maker to foreclose the non-farmer program loan account.

PART 1910—General

26. The authority citation for Part 1910 continues to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

27. In § 1910.8 paragraph (e) is added to read as follows:

§ 1910.8 Reaching an understanding.

* * * * *

(e) *Use of Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities."* Before or at loan closing, all FO, OL, SW, and EM applicants for initial or subsequent loans will have Form FmHA 1924-14 reviewed with them by the County Supervisor. In addition to some of the items listed in paragraph (d) of this section, Form FmHA 1924-14 explains servicing options that are available to the borrower, including deferral, and the limited resource program. Form FmHA 1924-14 will be signed and distributed in accordance with the FMI.

PART 1924—CONSTRUCTION AND REPAIR

28. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Management Advice to Individual Borrowers and Applicants

29. Subpart B of Part 1924 is revised to read as follows (Exhibit A remains unchanged):

PART 1924—CONSTRUCTION AND REPAIR

Subpart B—Management Advice to Individual Borrowers and Applicants

Subpart B—Management Advice to Individual Borrowers and Applicants.

§ 1924.51 General.

This subpart sets forth policies for providing management advice to farmer programs loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), and Economic Opportunity (EO) loans, and/or (RHF) Rural Housing loans for farm service buildings. This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a Farmer Program loan that is not collection-only or a judgment account, and those FO, SW and/or OL loan applicants and borrowers who use the services of a "New Full-Time Family Farmer and Rancher Development Committee." (See Exhibit A of this subpart). This subpart does not apply to individuals who owe non-program loans (defined in § 1872.20(a) of Subpart A of Part 1972 of this chapter).

§§ 1924.52-1924.55 [Reserved]

§ 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers by advising them of ways to use credit to make profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders.

(a) *Ineligible applicants.* In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available. If the applicant has filed an application for FmHA assistance, the procedure set out in Subpart B of Part 1900 of this chapter must be followed.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) *Eligible applicants.* In credit counseling with eligible applicants and borrowers, the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant or borrower of FmHA's credit-else-where requirements and assist in the determination of the amount of other credit best suited for the applicant or borrower.

§ 1924.57 Planning.

(a) *Long-Time plans (Form FmHA 431-1, "Long-Time Farm and Home Plan").* This plan reflects long-time aims and objectives. It will be completed by each applicant or borrower engaged in farming who is receiving a loan when necessary major adjustments or improvements will not be completed during one crop year. The long-time plan will cover the period of time required to complete the major adjustments or improvements and will be revised as conditions require.

(b) *Annual plan (Form FmHA 431-2, "Farm and Home Plan", and Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security").* These two forms will cover the 12-month period (or crop year) which most accurately reflects the annual production cycle of the operation. The references to Form FmHA 431-2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision.

(1) Form FmHA 1962-1 must be completed once each year and revised as needed in accordance with the Forms

Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. Form FmHA 1962-1 should be filled out at the same time as a Form FmHA 431-2 is being completed, if a Form FmHA 431-2 is required. The figures on the two forms must be consistent. For example, if the Form FmHA 431-2 shows the borrower plans to spend $10,000 on equipment and no FmHA loan funds are being advanced for that purpose, the Form FmHA 1962-1 should show where the $10,000 will come from. (Example—sale of wheat) Form FmHA 431-2 will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(iii) Who are experiencing financial and/or production management problems.

(iv) Who are requesting servicing options on Form FmHA 1924-26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action."

(v) Who have had payments deferred.

(vi) Who are making major adjustments to their operation.

(vii) Who have limited resource loans.

(2) Interim plans may be developed for the remainder of the current year's operation to supplement an annual plan (if one was required) for the following year in those cases where the annual plan alone would not be sufficient to show accurately the complete cycle of the operation. Interim plans and Form FmHA 1962-1 will show the planned use of income to be received from livestock and crops held for sale, and cash on hand at that time.

(3) If the borrower and the County Supervisor cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431-2 and 1962-1 when a new or subsequent loan is not involved, the County Supervisor will arrange for a meeting with the District Director, borrower and the County Supervisor. If during the meeting the District Director cannot negotiate a satisfactory agreement, the District Director will make the decision on the planned use of proceeds. Form FmHA 1962-1 will be completed by the District Director in accordance with the District Director's decision. An explanation of this action will be inserted on the forms which will be signed and dated by the District Director. Dispositions in violation of Form FmHA 1962-1 will be handled in accordance with Subpart A of Part 1962 of this chapter. The District Director's decision is not appealable. When a new or subsequent loan is involved, the loan will not be made and any appeal will be handled in accordance with Subpart B of Part 1900 of this chapter.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Stress the need to correlate long-time and annual plans when both are being developed.

(2) Develop a list of key farm management and financial management practices for major enterprises, which will be updated annually. The County Supervisor will advise borrowers of these practices and those practices not already used by a borrower will be incorporated into the operation when developing long-time and annual plans.

(3) Require applicants, when developing their long-time and annual plans, to take into consideration any plans developed, with the assistance of the Soil Conservation Service (SCS), the Extension Service (ES), or other agency or farm management service. When such plans are not used, the County Supervisor will document in the file the reasons for not using the plans.

(4) Plan for the appropriate use of income with the applicant in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter.

(5) Determine the feasibility of the plans. Plans must show the borrower will be able to:

(i) Pay all operating expenses and taxes.

(ii) Meet necessary payments on debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses.

(iv) Have a reasonable standard of living for the borrower or the farm operator in the case of a corporation, partnership or cooperative.

(v) Provide for any essential capital purchases or improvements.

(d) *Documentation and revision of plans.*

(1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. If the borrower does not have records, the County Supervisor will use Agricultural Stabilization and Conservation Service (ASCS) records, ES data, County averages or other reliable sources of data to develop the projections.

(2) Initial and subsequent plans and Form FmHA 1962-1 will be revised whenever changes in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur. The plan and Form FmHA 1962-1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the plan and Form FmHA 1962-1.

§ 1924.58 Recordkeeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance, to analyze borrower's farming operations, and to determine whether borrowers have made prudent management decisions.

(b) *Responsibilities.*

(1) Borrowers must select and maintain a recordkeeping system which adequately meets the needs of their farming operations and which provides, as a minimum, a record of the annual cash flow, beginning and end of year balance sheets, and an income statement. Borrowers receiving EM loans of $100,000 or more will be required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. Such borrowers will be encouraged to use a computer recordkeeping system when available.

(2) County Supervisors will determine whether borrowers have selected, established, and are maintaining appropriate record keeping systems. Such systems may include the farm record book available through FmHA (Form FmHA 432-1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial record keeping or accounting service, which is acceptable to FmHA.

§ 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the Government's interest and to accomplish the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used for each borrower.

(c) *Supervisory methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, etc. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require follow-up action. The record must state the advice that was given and any problems noted.

(d) *Use of Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals, and Borrower Responsibilities."*

Before or at loan closing, the County Supervisor will provide borrowers with this form. Borrowers who *voluntarily* decide to sell their chattels and real estate, to transfer their assets to someone else, to convey their assets to the Government, or to sign an accelerated repayment agreement will be sent this same form before the sale, transfer, conveyance or signing of an accelerated repayment agreement takes place. The form will also be sent to all farmer program loan borrowers in November of each year to remind them of the available servicing options. The form tells borrowers that they are expected to repay their loans as scheduled, but that FmHA has several servicing options available to assist borrowers if they are not able to pay as scheduled. It goes on to give brief descriptions of deferral, rescheduling, reamortization, consolidation, subordination, restructuring the business and debt by selling a portion of the borrower's assets, and limited resource loans. If borrowers want more information about these options and want to know how to apply, they are advised on the form to contact the County Supervisor. The County Supervisor will then set up a conference with the borrower and tell the borrower what information to furnish FmHA so that FmHA can make a decision about the request. The form also summarizes some of the borrower's responsibilities regarding loan payments, loan security, use of loan funds, releases of security, and changes in the operation, and informs the borrower that a violation of any of these responsibilities not only could result in denial of further FmHA assistance but also could cause the loan(s) to be accelerated.

(e) *Farm visits.* A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, who have a limited resource loan, who have been sent Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," or who have had their loans reamortized, rescheduled, consolidated and/or deferred. The District Director will visit a sufficient number of borrowers to assure that the cases are being properly supervised. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(1) Visits will be coordinated with required inspections of security.

(2) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Borrowers who have indebted less than one full crop year or have a limited resource loan.

(ii) Borrowers who have been sent Form FmHA 1924-25.

(iii) Borrowers who have had their loans reamortized, rescheduled, consolidated and/or deferred.

(iv) Borrowers receiving annual production type loans.

(v) Other borrowers.

§ 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses will develop information for sound lending and supervisory decisions and assist borrowers in utilizing sound business planning and management practices. Specifically, analyses are used to:

(1) Show the operator the cost of profit of a managment decision. These figures can then be used to make other management decisions that will increase the efficiency and/or profitability of the operation.

(2) Assist the operator in determining whether the type and scope of the operation are practical and profitable.

(3) Determine success in key management practices resulting in an improved return; or revealing a decision that reduces net dollar return.

(4) Monitor progress of borrowers in achieving long-range goals and in graduating to other credit.

(5) Help the County Supervisor determine how much individual supervison will be required for each borrower. The analysis will also help the County Supervisor determine feasibility of continuing with a borrower.

(6) Help the borrower and the County Supervisor prepare an annual plan of operation for the next crop year; and help them make sound management decisions.

(b) *Items considered for making an analysis.* The following are some of the items that should be considered during an analysis:

(1) Resources available.

(2) Options for types of enterprise available for the operation such as corn v. soybeans, selling the crop v. feeding it to livestock, etc.

(3) Comparison of the production of livestock, livestock products or crops to past production.

(4) The production of this farming operation as compared to similar farming operations.

(5) Financial progress—increase or decrease of debts as compared to the increase or decrease of assets.

(6) Cost of operating expenses as compared to previous years and similar farming operations.

(7) Debt repayment as compared to money available to pay debts.

(8) Experience and ability of the borrower.

(9) Availability and cost of credit.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Determine the date and place of the analysis, and schedule the analysis at the time of year when the most effective results will be obtained.

(2) Assist the borrower in completing the "actual" columns on Forms FmHA 431-2 and 1962-1 and in completing Form FmHA 431-2 for the next year.

(3) Make a complete entry in the case file running record of the items discussed with the borrower and results and agreements reached during the analysis, underscoring those items requiring follow-up action.

(4) Record the results of Form FmHA 1960-12, "Financial Farm Analysis Summary."

(d) *Conducting analysis.* An analysis will be conducted for borrowers:

(1) Who are seriously delinquent (over $100.00) or who request assistance on Form FmHA 1924-26.

(2) Who are experiencing financial and/or production management problems.

(3) Who are reorganizing or implementing a major change in operations which has not been completed.

(4) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower is conducting the operation satisfactorily.

(5) Who have been granted a deferral.

(6) Who have limited resource loan(s).

§ 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. Forms FmHA 431-4, "Business Analysis-Nonagricultural Enterprise," and FmHA 432-10, "Business and Family Record Book," available at most FmHA offices, can be used for these purposes.

§ 1924.62 State supplements.

State supplements will be issued as necessary to implement this subpart and assure that a list of key farm management and financial management practices is established, and kept current in each County Office. The State supplement should set the time of year for conducting analyses.

§§ 1924.63-1924.70 [Reserved]

§ 1924.71 Delinquent borrowers.

The Finance Office will send each County Office a list of all delinquent OL, FO, SW, RL, EM, EE, EO, SL and RHF borrowers on March 31, June 30, September 30, and December 31. Beginning December 31, 1985, all borrowers (except those under the jurisdiction of a bankruptcy court) that are more than $100 behind schedule on their FmHA loan payments on December 31 will immediately be sent Form FmHA 1924-25, and Form FmHA 1924-14, to show that FmHA intends to accelerate the account(s), the Form FmHA 1924-26. Cases involving litigation will be handled in accordance with the advice of the Office of General Counsel (OGC). Bankruptcies will be handled in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

§ 1924.72 Borrowers who receive Forms FmHA 1924-25 and 1924-26.

Borrowers will receive Form FmHA 1924-25 and 1924-26 along with Form FmHA 1924-14 before a farmer program loan is involuntarily liquidated (see § 1872.17 of Subpart A of Part 1872 of this chapter and §§ 1962.40 and 1962.49 of Subpart A of Part 1962 of this chapter) and when an account is more than $100 delinquent on December 31 (see § 1924.71 of this subpart). These forms will also be provided to borrowers who have made unauthorized dispositions of security, who have stopped farming, or who have otherwise breached their loan agreements with FmHA. These forms will be provided, for information only, when a farmer program loan borrower files bankruptcy (see § 1962.47 of Subpart A of Part 1962 of this chapter). Form FmHA 1924-25 tells borrowers that FmHA intends to liquidate their loans (which will include terminating any previously agreed-upon releases of sales proceeds) and tells borrowers exactly why FmHA plans to take such action. The form explains that the servicing options described in Form FmHA 1924-14 are available, and also explains that FmHA will proceed to liquidate a borrower's loans unless the borrower applies for at least one of the servicing options, appeals the adverse action using FmHA's administrative appeals procedure (found at Subpart B of Part 1900 of this chapter), cures existing default, or liquidates the loans. Borrowers who receive Form FmHA 1924-25 will also receive Form FmHA 1924-26. This form must be completed to show whether the borrower wants to apply for servicing options, to appeal, to cure the default or to liquidate.

(a) *Borrower fails to respond.* The borrower is told on Form FmHA 1924-26 that the form must be returned to FmHA within 30 days of the day the borrower received Forms FmHA 1924-14, 1924-25, and 1924-26. If Form FmHA 1924-26 is not returned on time, FmHA will proceed with the intended action(s). Such actions are not appealable.

(b) *Borrower checks blocks in Part I.* Part I of Form FmHA 1924-26 contains a list of available servicing actions including rescheduling, reamortization, consolidation, deferral, subordination, limited resource loans, and the restructuring of the debt and business by selling a portion of the assets. If the borrower checks one or more of these blocks, the borrower must attend a conference with FmHA to develop financial statements and proposed operating plans which FmHA will use as a basis for granting or denying the requested servicing relief. If the borrower attends the conference and the County Supervisor approves the request for servicing relief, then the notice of intent to take adverse actions will be considered terminated. If the borrower attends the conference but the County Supervisor denies the servicing request, then the County Supervisor will notify the borrower in writing of the denial with the reasons and facts supporting the denial. The borrower will be advised of appeal rights in accordance with Subpart B of Part 1900 of this chapter, and the appeal will cover both the denial of the request for servicing and the other adverse action FmHA intends to take. If the borrower (or representative) fails to attend the scheduled conference without a reasonable excuse or fails to provide necessary information, the request will be automatically denied and the borrower will not be given any administrative appeal of the adverse decision. The County Supervisor will send Exhibit B-6 to Subpart B of Part 1900 of this chapter to the borrower and will proceed to liquidate the borrower's account.

(c) *Borrower checks blocks in Part II.* The borrower who does not want to be considered for any servicing options but who wants to request an administrative appeal of FmHA's intended adverse action must so indicate by checking one of the appropriate blocks in Part II of Form FmHA 1924-26. Any appeal will be handled under Subpart B of Part 1900 of this chapter. If the borrower wants an appeal hearing, the borrower can be represented by counsel or by any other representative, and the hearing officer will be an FmHA employee who has not been previously involved in the borrower's case. The borrower can choose to have FmHA make a review on the record rather than hold a hearing. If the borrower prevails in the administrative appeal, no adverse action will be taken by FmHA. If instead the borrower completes Part II to show that no appeal is desired, then FmHA wil take the adverse action.

(d) *Borrower checks blocks in Part III.* The borrower who does not want to be considered for any servicing options or does not want to request an administrative appeal can choose to cure the default (that is, pay the delinquent account current or make restitution to FmHA for unauthorized disposition of security) and will so indicate by checking one of the blocks in Part III of that form. The borrower has 60 days from the day the borrower received Form FmHA 1924-26 to cure the default. If the action is not completed within 60 days, then FmHA will proceed to take the adverse action against the borrower and no appeal will be allowed.

(e) *Borrower checks blocks in Part IV.* If the borrower does not want to be considered for any servicing options or to request an administrative appeal or to cure the default, the borrower can choose to liquidate the account (that is, sell the security, transfer it to someone else who will assume the FmHA debt, covey it to the Government or refinance the FmHA loan with another lender). The borrower will indicate this by checking one of the blocks in Part IV of Form FmHA 1924-26. The liquidation alternative chosen must be taken within 120 days of the day the borrower received Form FmHA 1924-26. If the action is not completed within 120 days, then FmHA will proceed to take the adverse action against the borrower and no appeal will be allowed.

(f) *Borrower incorrectly completes Form.* If the borrower incorrectly completes Form FmHA 1924-26, the County Supervisor will contact the borrower to inform the borrower of the problem and request the borrower to submit a corrected form within 10 working days of the contact or within the 30 days of the date the Form FmHA 1924-25 was received, whichever is later. If the borrower fails to submit a corrected form within the required time FmHA will proceed with the intended adverse action and it will not be appealable. The contact will be recorded in the borrower's County Office case file.

§ 1924.73 Follow-up supervisory actions by District Directors and State office staff.

(a) *Follow-up by the District Director.* The District Director is responsible for seeing that the County Office staff correctly handled any requests made on Form FmHA 1924-26, by those borrowers listed in § 1924.60 (d) of this subpart in an effective and timely manner. This will include visits to evaluate a sufficient number of such cases to determine what further training is needed by the County Supervisor in supervising such cases. The District Director should continue follow-up actions periodically as needed to obtain the desired results in each County Office area. The District Director will report in writing to the State Director any deficiencies found and any need for additional training.

(b) *Follow-up by State Office staff.*

(1) The State Director is responsible for seeing that the special actions prescribed by this subpart are carried out by the County Supervisors and District Directors.

(2) Loan chiefs and specialists should review a representative sample of cases of those borrowers listed in § 1924.60 (d) of this subpart during each visit to a County Office to assure that a thorough analysis has been made, that appropriate action has been taken, and to determine what further training, if any, is needed for the District Director and County Supervisor.

(3) The State and/or District Offices should periodically review the progress made in servicing the cases of those borrowers listed in § 1924.60 (d) of this subpart.

§§ 1924.74-1924.99 [Reserved]

§1924.100 OMB number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0061.

Exhibit A—New Full-Time Family Farmer, and Rancher Development Project

* * * * *

PART 1941—OPERATING LOANS

30. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 USC 1989; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Operating Loan Policies, Procedures, and Authorizations

31. In § 1941.18 paragraphs (a)(2) and (c) are revised to read as follows:

§ 1941.18 Rates and terms.

(a) * * *

(2) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (See § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as consolidation, rescheduling or deferral is taken to determine the interest rate to be charged. The rate may be increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter).

* * * * *

(c) *Consolidation or rescheduling.* When the loan approval official determines that consolidation or rescheduling will assist in the orderly collection of an OL loan, the loan approval official may take such action under Subpart A of Part 1951 of this chapter.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

32. The authority citation for Part 1943 is revised to read as follows:

Authority: 7 USC 1989; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

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

33. In § 1943.16, paragraph (d)(2) is revised to read as follows:

§ 1943.16 Loan purposes.

* * * * *

(d) * * *

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

* * * * *

34. In § 1943.18, paragraphs (a), (b) and (c)(3) are revised to read as follows:

§ 1943.18 Rates and terms.

(a) *Terms and loans.* Each loan will be scheduled for repayment over a period of not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any FO loan, the loan approval official may take such action under Subpart A of Part 1951 of this chapter.

(c) * * *

(3) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (See § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as a reamortization or deferral is taken, to determine the interest rate to be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter.)

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

35. In § 1943.68, pargraphs (a) and (b) are revised to read as follows:

§ 1943.68 Rates and terms.

(a) *Terms of Loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under Subpart A of Part 1951 of this chapter.

* * * * *

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

36. In § 1943.118, paragraphs (a) and (b) are revised to read as follows:

§ 1943.118 Rates and terms.

(a) *Terms of Loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any RL loan the loan approval official may take such action unde Subpart A of Part 1951 of this chapter.

* * * * *

PART 1945—EMERGENCY

37. The authority citation for Part 1945 is revised to read as follows:

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

Subpart D—Emergency Loan Policies, Procedures and Authorizations

38. In § 1945.168, the introductory text of paragraph (b), paragraph (b)(1)(i), and paragraph (c) are revised to read as follows:

§ 1945.168 Rates and terms.

* * * * *

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life of the security and the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term of each loan. In any case, there must be an interest installment scheduled at least annually. Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(1) * * *

(i) Actual production or physical loss loans made for operating purposes under § 1945.166(a), or major adjustment (Subtitle B) loans made for purposes under § 1945.166(c)(3) of this subpart, will be for periods not to exceed 7 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term, and the loan(s) can be secured for the longer term. Such a longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the Farm and Home Plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the county office case file. Generally, real estate will be needed as security when the longer repayment period is authorized.

* * * * *

(c) *Consolidation, rescheduling, and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

* * * * *

PART 1950—GENERAL

39. The authority citation for Part 1950 is revised to read as follows:

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

Subpart C—Servicing Accounts of Borrowers Entering the Armed Forces

40. § 1950.102 is revised to read as follows:

§ 1950.102 General.

(a) FmHA will do everything possible to assist borrowers entering the armed forces to adjust their affairs in contemplation of military service. It is not the policy FmHA to renew, postpone, or modify annual installments due under a promissory note because of the borrower's entry into the armed services. However, under the Soldiers' and Sailors' Civil Relief Act of 1940, the property of a borrower in the armed forces cannot validly be seized or sold by foreclosure or otherwise during the borrower's tenure of service, or for three months thereafter, except (1) pursuant to an agreement entered into by the borrower after having been accepted for service, or (2) by order of the Court. Any person causing an invalid sale to be made is guilty of a misdemeanor. Regardless of the foregoing, the long-time interest of the borrower can best be served by prompt and satisfactory arrangements for the use and protection, or disposition, of the security property in accordance with the policies expressed herein. Upon request, OGC will inform the State Director with respect to relief which may be secured by a borrower under the Soldiers' and Sailors' Civil Relief Act of 1940.

(b) In connection with Multiple Housing loans to individuals, references to County Supervisor and County Office in this subpart will be read as District Director and District Office.

41. § 1950.103 is amended by revising paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(2), (b)(3), (b)(4) and (c) to read as follows:

§ 1950.103 Borrower owing FmHA loans which are secured by chattels.

(a) *Policy.* (1) Borrowers who owe loans *other than* Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), and Special Livestock (SL) Loans and/or Rural Housing loans for farm service buildings (RHF). When information is received that a borrower is entering the armed forces, the County Supervisor will be responsible for contacting the borrower immediately for the purpose of reaching an understanding concerning the actions to take in connection with the FmHA loan indebtedness. The borrower will be permitted to retain the chattel security if arrangements can be worked out which are satisfactory to the borrower and

FmHA. However, because of the nature of chattel security, the borrower will be informed of the usual depreciation of such property and will be encouraged to sell the property and apply the proceeds to the loan(s). In most cases, the interests of both the borrower and the Government can best be served by arranging for a voluntary sale of the security. A borrower retaining security will be expected to make payments on the loan(s) equal to the scheduled payments.

(2) Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO and/or RHF loans. If the borrower is delinquent or otherwise in default, the County Supervisor will send the borrower Forms FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and follow the directions in Subpart A of Part 1962 of this chapter for liquidating chattel security. If the borrower is not delinquent, the County Supervisor will explain the options set out in paragraph (b) of this section.

(b) * * *

(1) Voluntary sale of security. This will be accomplished in accordance with § 1962.41 of Subpart A of Part 1962 of this chapter. Any necessary forms will be signed:

* * * * *

(2) Assumption of indebtedness. This will be accomplished in accordance with § 1962.34 of Subpart A of Part 1962 of this chapter.

(3) Arrangements with third persons. When the borrower arranges with a relative or other reliable person to maintain the security in a satisfactory manner and to make scheduled payments, the State Director is authorized to approve the arrangement. In such a case, the borrower will be required to execute a power of attorney, prepared or approved by OGC, authorizing an attorney-in-fact to act for the borrower during the latter's absence.

(4) Possible legal actions. If the borrower fails or refuses to cooperate in the servicing of the loan indebtedness secured by chattels in accordance with one of the methods set forth in this section, the borrower's case folder will be forwarded to the State Director for referral to OGC for legal advice as to the steps to be taken in protecting the Government's interest.

(c) *Statements of accounts and transfers.* Borrowers entering the armed forces will be requested to designate mailing addresses for the delivery of statements of account. Any changes in these addresses will be processed on Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," with appropriate explanations. Under this procedure, a statement of account may be mailed to a location other than where the account is maintained and serviced. This is a deviation from the established procedure. These cases will not be transferred unless the security, when retained by the borrower in accordance with paragraph (b)(3) of this section, is moved into another County Office territory. Then the transfer will be processed through the use of Form FmHA 450-5, "Application to Move Security Property and Verification of Address," and Form FmHA 450-10 with appropriate explanations. In cases when assumption agreements have been executed, statements of account will be mailed to the assuming borrower. Cases involving assumption agreements will be transferred when the assuming borrower moves from one County Office territory to another.

42. § 1950.104 is amended by revising the introductory text, and paragraphs (c), (d) and (e) to read as follows:

§ 1950.104 Borrower owing FmHA loans which are secured by real estate.

County Supervisors, to the greatest extent possible, should keep themselves informed of the plans of borrowers with FmHA loans secured by real estate who may enter the armed forces. They should encourage any borrower who is definitely entering the armed forces to consult with them before the borrower's military service begins concerning the most advantageous arrangements that can be made regarding the security. County Supervisors will assist these borrowers in working out mutually satisfactory arrangements. Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO and/or RHF loans and who are delinquent or otherwise in default must be sent Forms FmHA 1924-14, 1924-25, and 1924-26. The County Supervisor will follow the directions in Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1) for liquidating real estate security. FO, SW, RL, OL, EE, EM, SL, EO and/or RHF borrowers who are not delinquent will have their accounts handled as set out in the following paragraphs.

* * * * *

(c) *Borrower does not retain ownership of the security.* The security may be transferred to another approved applicant or sold in accordance with applicable procedure.

(d) *Borrower abandons the security or fails to make satisfactory arrangements.* This paragraph does *not* apply to borrowers with FO, SW, RL, OL, EE, EM, SL, EO and/or RHF loans. Those borrowers should be sent Forms FmHA 1924-14, 1924-25, and 1924-26. When a borrower abandons the security or fails to make satisfactory arrangements for maintenance of the security and payment of taxes, insurance, and installments on the loan, the County Supervisor will send a complete report on the case to the State Director. The report will include all the information that can be obtained regarding the borrower's plans for the security and any evidence to indicate that abandonment has, in fact, taken place. In these instances, it must be recognized that the borrower may have entered into verbal arrangements for the care of the security without properly advising the County Supervisor. Whether such cases may be construed to be in violation of the provisions of the mortgage, so as to support foreclosure by order of the Court under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, will need to be determined on an individual case basis by the State Director and OGC. Clear-cut abandonment cases or instances in which the borrower fails to take action to transfer or sell the property, while evidencing no interest in it or desire to retain it, will be processed in accordance with applicable procedures.

(e) *Statement of account.* Borrowers entering the armed forces who retain ownership of the security will be requested to designate mailing addresses for the delivery of statements of account. Any changes in addresses will be processed on Form FmHA 450-10 with appropriate explanations.

PART 1951—SERVICING AND COLLECTIONS

43. The authority citation for Part 1951 continues to read as follows:

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

Subpart A—Account Servicing Policies

44. Subpart A is revised to read as follows (Exhibits C-1, C-2, D, F, and G remain unchanged):

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

Note.—Exhibits C-1, C-2, D, F, and G do not appear in the Code of Federal Regulations.

Subpart A—Account Servicing Policies

§ 1951.1 Purpose.

This Subpart sets forth the policies and procedures to use in servicing Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Recreation Loan (RL), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), and Rural Housing Loan for farm service buildings (RHF) accounts. This Subpart also applies to Rural Rental Housing Loan (RRH), Rural Cooperative Housing Loan (RCH), Labor Housing Loan (LH), Rural Housing Site Loan (RHS), and Site Option Loan (SO) accounts not covered under the Predetermined Amortization Schedule System (PASS). Loans on PASS will be administered under Subpart K of Part 1951 of this chapter. Cases involving unauthorized assistance will be serviced under Subparts L and N of this Part. Cases involving graduation of borrowers to other sources of credit will be serviced under Subpart F of this Part.

§ 1951.2 Policy.

Borrowers are expected to pay their debts to the Farmers Home Administration (FmHA) in accordance with their agreements and ability to pay. They will be encouraged to pay ahead of schedule, consistent with sound financial management. When borrowers have acted in good faith and have exercised due diligence in an effort to pay their indebtedness but cannot pay on schedule because of circumstances beyond their control, servicing actions will be consistent with the best interests of the borrower and the Government. It is the policy of this agency to service borrower loan account without regard to race, color, religion, sex, marital status, national origin, age, physical or mental handicap (borrower must possess the capacity to enter into a legal contract for services).

§ 1951.3 Authorities and responsibilities.

County Supervisors and District Directors are responsible for servicing all FmHA accounts serviced by the County and District Offices as prescribed by this subpart under the general guidance and supervision of District Directors and State Office personnel. Full use will be made of the County Office Management System in account servicing. For the purposes of this Subpart, all references to "County Supervisor" shall be construed to mean "District Director" for all loans serviced by the District Office.

§ 1951.4-1951.5 [Reserved]

§ 1951.6 Handling payments.

(a) *Payments on Rural Housing (RH) loans.* Payments on RH loans will be handled in accordance with Subparts B and G of this Part.

(b) *Payments for other than RH, FO and SW loans.* These payments will be handled in accordance with Part 1951, Subpart B.

(c) *Payments for FO and SW loans.*

(1) Payments made through the County Office without direct payment cards for FO and SW loans will be handled in accordance with Part 1951, Subpart B.

(2) Payments for FO and SW loans made through the County Office with direct payment cards will be handled as follows:

(i) County Supervisors may put FO and SW borrowers on direct payment cards systems if the borrower only needs limited credit counseling or only makes one annual installment payment per year on the loan.

(ii) For new loans, the County Supervisor will indicate by checking the appropriate block on Form FmHA 1940-1, "Request for Obligation of Funds," that for selected borrowers direct payment cards are to be mailed to the County Office.

(iii) An existing loan borrower may be put on or taken off this direct payment card system by filling out Form FmHA 451-34, "Direct Payment Plan Change," in accordance with the Forms Manual Insert (FMI) and mailing it to the Finance Office.

(iv) Payments must be made by check or money order payable to the Farmers Home Administration. The check or money order with the appropriate payment card should be placed in the direct payment envelope and forwarded directly to the Finance Office with any other items being mailed that day.

(v) The Finance Office, upon receipt of the payment card and check or money order, will credit the borrower's account with payment as of the date the payment is received in the Finance Office.

(vi) When the Finance Office receives payment card number 10, a new supply of cards will be mailed to the County Office. All 12 payment cards should be used before using the new supply.

(3) Direct payment for FO and SW loans mailed directly to the Finance Office by the borrower are handled as follows:

(i) The County Supervisor will select the FO and SW borrowers who, in the Supervisor's opinion, are capable of making direct payments to the Financing Office. The County Supervisor will not select borrowers who (A) will need frequent credit counseling, (B) because of the lack of education or other reasons, are not capable of assuming responsibility for making payments directly to the Finance Office, or (C) have payments directly assigned to FmHA, such as milk assignments. The fact that a borrower does not maintain a checking account will not, however, prevent selection for direct payments.

(ii) For new loans the County Supervisor will indicate on Form FmHA 1940-1 the selected borrowers by checking the appropriate box. The payment card packet will be forwarded to the County Office at the time the loan is obligated. It will be delivered to the borrower at loan closing, at which time the use of the payment cards will be explained to the borrower.

(iii) For Assumption Agreements, the packet will be mailed to the borrower at the time the Assumption Agreement is processed in the Finance Office.

(iv) The payment cards and pre-addressed envelopes, together with instructions on how to use the cards and a record keeping card, will be assembled into an envelope in which the borrower may retain the records. The Form FmHA 370-45 "Direct Payment Card," will be numbered 1-12, even though the borrower may have less or more than 12 payments scheduled during the year.

(v) The Finance Office, upon receipt of Form FmHA 370-45 and a check or money order, will credit the borrower's account with payment as of the date the payment is received by the Finance Office.

(vi) When the Finance Office receives Form FmHA 370-45 for payment number 10, a new supply of Forms FmHA 370-45 will be prepared and mailed to the borrower. All 12 copies of Form FmHA 370-45 should be used before using the new supply.

(vii) If a borrower is on direct payment and receives a subsequent FO or SW loan, the Finance Office will send a set of Forms FmHA 370-45 with "FO" or "SW" in the loan number block. This indicates the borrower has more than one loan of the particular type. The borrower will be instructed by the County Office to send a Form FmHA 370-45 showing the amount and a check or money order for the total payment.

(d) *County Office handling of direct payment accounts.* Form FmHA 1905-1, "Management System Card—Individual" and Form FmHA 1905-5 "Management System Card-Individual (Rural Housing only)," will be used in the County Office Management System Box. These forms and the transaction records will be maintained as prescribed in FmHA Instruction 1905-A (available in any FmHA office). In addition, an orange signal will be placed to the left of Position A on Form FmHA 1905-1 to denote that the borrower is on the direct payment system. If a borrower fails to make payments as agreed, or becomes delinquent in taxes or insurance so that it is necessary for FmHA to pay taxes or insurance by voucher, the County Supervisor may request the Finance Office to remove the borrower from the direct payment method. If this decision is made, the County Supervisor will contact the borrower and collect the remaining supply of Forms FmHA 370-45 which will be destroyed. The borrower will be informed that payment after that date should be made to the County Office. If at a later date the borrower is making payments on schedule, the County Supervisor may request the Finance Office to put the borrower back on the direct payment method and provide a new set of Forms FmHA 370-45. These changes are made by filling out Form FmHA 451-34 in accordance with the FMI and mailing it to the Finance Office.

(e) *Account servicing actions retained by the County Office.* For those borrowers who make direct payments to the Finance Office, the County Supervisor will continue to handle the following servicing actions:

(1) Any regular payments a borrower is to make prior to receiving the packet of payment cards will be made through the County Office in the usual manner.

(2) All payments other than regular payments will be made through the County Office in the usual manner.

(3) The County Supervisor will counsel with borrowers concerning questions they have about their account. If assistance is needed, the County Supervisor will contact the State or Finance Office as appropriate.

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account and a new Form FmHA 451-26, "Transaction Record," reflecting the uncollectible amount will be prepared. The Form FmHA 451-26 will be mailed to the County Office. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment card to the Finance Office.

(f) *Borrowers receiving other type loans.* If a borrower is on direct payment and subsequently receives another type loan, the original loan may remain on the direct payment system.

(g) *Borrowers with RRH, RCH, or LH, loans on a Predetermined Amortization Schedule System (PASS).* Loans or PASS will be administered under Subpart K of this part.

(h) *Borrowers with RRH, RCH, LH, RHS and SO loans administered under this subpart.* RRH, RCH, LH, RHS and SO loans on a daily interest accrual system (DIAS) for applying payments administered under this subpart are subject to the direct billing and payment requirements in § 1951.506 of Subpart k of this part. All payments are due on the first day of the months following the date shown on the promissory note, except loans with principal and interest bonds issued before May 1, 1965. All payments are considered delinquent for reporting purposes on the 15th day of the month following the payment due date if the unpaid portion of the payment exceeds $15.00.

§ 1951.7 Accounts of borrowers

(a) *Accounts of active borrowers.* The foundation for proper and timely debt payment is sound farm and home planning or budgeting, including plans for debt payment, supplemented by effective followup management assistance. Account servicing, therefore, must begin with initial planning and must be an integral part of analysis and subsequent planning, as well as follow-up management assistance.

(b) *Accounts of collection-only borrowers.*

(1) Collection-only borrowers are expected to pay debts to FmHA in accordance with their ability to pay. Efforts to collect such debts, including use of collection letters and account servicing visits, must be coordinated with other program activities. If these borrowers are unable to pay in full, appropriate debt settlement policies should be promptly applied.

(2) Envelopes addressed to collection-only borrowers will bear the legend "DO NOT FORWARD." When an envelope is returned indicating the borrower has moved, appropriate steps will be taken to determine the borrower's correct address.

(3) Regular County Office employees are generally expected to service the collection-only caseload when it is of moderate size. State Directors may assign additional employees to County Offices having large collection-only caseloads when necessary to service such cases to a prompt conclusion. State Directors may inform the National Office of the need for employing special collection personnel in urban areas having large collection-only caseloads when employees are not available to assign to such areas.

(4) The following actions will be taken in servicing accounts owed by collection-only borrowers:

(i) District Directors will review, yearly, all collection-only cases in each County Office with the County Supervisor as early in *each* fiscal year as possible. They will jointly agree on the actions to take and will complete Form FmHA 451-27, "Review of Collection-Only Accounts."

(ii) District Directors will establish with County Supervisors a systematic plan for collecting the accounts or initiating appropriate debt settlement actions during the year.

(iii) County Supervisors will include in their monthly calendars plans for servicing these accounts.

(iv) On visits to County Offices, District Directors will review the progress being made by County Supervisors to insure that goals will be reached.

(v) For collection-only accounts in District Offices, the State Director will review the accounts as required in paragraphs (b)(4)(i) through (b)(4)(iv) of this section and the District Director will service the account.

(c) *Notifying borrowers of payments.* County Supervisors will notify borrowers of the dates and amounts of payments that have been agreed on for all types of accounts. Form FmHA 451-3, "Reminder of Payment to be Made," or similar form approved by the State Director, will be used. The form will not contain any language indicating that an account is delinquent. These notices will be timed to reach borrowers immediately before the receipt of the income from which the payments should be made or before the installment due date on the note, as appropriate, and may include other pertinent information such as a reference to agreements reached during the year and sources of income from which the payment was planned. Such notices need not be sent when frequent payments are scheduled and the borrower customarily makes the payments when due.

(d) *Subsequent servicing* (1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with § 1924.71(b) of Subpart B of Part 1924 of this chapter.

(2) When a borrower other than a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will contact the borrower to discuss the reasons why the payment was not made and to develop specific plans, for making the payment. Form FmHA 451-32, "Notice of Payment Due," may be used to notify borrowers who make payments directly to the Finance Office that their payment has not been received. Form FmHA 450-13, "Request for Assignment of Income From Trust Property," may be used when other methods of loan collection fail and debt repayment is possible from trust income. In the event the borrower refuses to make the payment when income is available, or if it is determined that income will not be available to make the payment within a reasonable length of time and will not be available to make future payments, action will be taken to protect the Government's interest in accordance with applicable regulations. Followup actions of subsequent servicing will be noted on appropriate Management System Cards.

(e) *Maintaining records of accounts in County Offices.* Records of the accounts of FmHA borrowers will be maintained in the County Office on Forms FmHA 1905-1, FmHA 1905-5, FmHA 1905-10, "Management System Card-Association," as provided in FmHA Instruction 1905-A (available in any FmHA office).

(f) *Inquiry Station.* The following information concerning individual borrower transactions can be obtained from the Finance Office Inquiry Station by County Offices:

(1) Unpaid balances on accounts being transferred.

(2) Status on loan dockets submitted for obligation.

(3) Status of loan checks not received within two weeks of date requested.

(4) Unpaid balances for final payments on all types of loans.

(5) Status of insured notes for loan servicing. If a particular note is needed but is not at the County Office, ask the operator to determine the note's location. It it is held by a private investor, the Finance Office can arrange for its repurchase.

(6) Help in problem cases when information requests through regular channels within the Finance Office have not been responded to or the information received was inaccurate. *DO NOT* make initial contacts on such cases through an inquiry station —go to the appropriate unit of the Finance Office. For the telephone number and further information on use of the inquiry station please consult the booklet "Inquiry Station Helps County Offices Get the Facts on Borrower Accounts."

(g) *Inquiry for Multiple Family Housing (MFH) loans.* Inquiry for all RRH, RCH, LH, RHS and SO loans and grants will be made through field terminals using procedures in the "MFH Users Procedures" manual or by contacting the MFH Unit in the Finance Office.

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined in § 1962.4 (j) of Subpart A of Part 1962 fo this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, and normal income as defined in Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the Finance Office by direct payment borrowers are considered regular payments.

(b) *Extra payments.* Extra payments are payments derived from:

(1) Sale of chattels other than chattels which will be sold to produce farm income or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of the real estate debt.

(3) Mineral royalties.

(4) Cash proceeds of real property insurance as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(5) A sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(6) Agricultural Conservation Program payments as provided in Subpart A of Part 1941 of this chapter.

(7) Transactions of a similar nature which reduce the value of security other than chattels which will be sold to produce farm income.

(c) *Refunds.* Refunds are payments derived from the return of unused loan or grant funds, except that the term "refunds" as used in Form 1940-17, "Promissory Note," will be construed to mean the return of funds advanced for capital goods, when a loan is made for operating purposes.

§ 1951.9 Distribution of payments when a borrower owes more than one type of FmHA loan.

"Distribution" means dividing a payment into parts according to the rule set out in this section.

(a) *Distribution of regular payments.*

(1) When a borrower owes more than one type of FmHA loan, regular payments received from *each crop year's income* will be distributed in accordance with the following priorities:

(i) *First,* to an amount equal to any advances made by FmHA for the crop year's living and operating expenses. If no advances were made, distribute the payment according to paragraph (a)(1)(ii) of this section. If the amount of the payment was greater than the amount of any advances, the excess should be distributed according to paragraph (a)(1)(ii) of this section.

(ii) *Second,* to FmHA loans in proportion to the approximate amounts due on each for the year. In determining the amounts due for the year, deduct an amount equal to any advances for the year's living and operating expenses. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each loan for the year, the excess should be distributed according to paragraph (a)(1)(iii) of this section.

(iii) *Third,* to FmHA loans in proportion to the delinquencies existing on each. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each loan for the year *plus* any delinquencies, the excess should be distributed according to paragraph (a)(1)(iv) of this section.

(iv) *Fourth,* as advance payments on FmHA loans. In making such distribution consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(2) When the County Supervisor determines it is reasonable to expect that the income which will be available for payment on FmHA debts will be sufficient to pay the installments scheduled for the year under the first and second priorities, collections may be distributed so as to avoid unnecessary delinquencies, and regular payments derived from rental or lease of real estate security after approval of foreclosure or voluntary conveyance will be distributed to the real estate lien of the highest priority.

(3) Payments will be distributed differently than the priorities provided in this section if accounts are out of balance or a different distribution is needed to protect the government's interest.

(b) *Distribution of extra payments.* Extra payments will be distributed first to the FmHA loan having highest priority of lien on the security from which the payment was derived. When the payment is in excess of the unpaid balance of the FmHA lien having the highest priority, the balance of such payment will be distributed to the FmHA loan having the next highest priority.

(c) *Application of payments.* After the decision is reached as to the amount of each payment that is to be distributed to the different loan types, application of the payment will be governed by §§ 1951.10 or 1951.11 of this subpart as appropriate.

§ 1951.10 Application of payments on production type loan accounts.

Employees receiving payments on OL, EO, SW coded "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of interest which accrues during the deferral period and then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note.

(a) *Rules for selection of accounts.* The following rules will govern the selection of accounts and installments to which payments will be applied. As used in this section, "recoverable costs" are those which the loan agreement documents say the borrower is primarily responsible for paying and which the government can charge to the borrower's account.

(1) Payments from farm income or from assignments of income will be applied first to accounts with small balances, including recoverable costs, to remove such accounts from the records. Any balance will be applied on debts secured by the lien in the following order:

(i) To amounts due or falling due on loans made in connection with the current year's operations, except:

(A) When funds loaned for the purchase of capital goods were used to meet the current year's operating expenses, payments will be applied first to the final unpaid installments to the extent of the loan funds so used. These payments will be treated as extra payments.

(B) When installments on loans previously made fall due before the installment on the loan for the current year's operations or when such loans are delinquent and it is anticipated that sufficient income will be received to meet the installment on the current year's operations when due, collections may be applied first to installments on loans made in previous years.

(ii) To accounts having the oldest delinquencies, or if no delinquencies, to the oldest unpaid account, except that the amount available for payment on OL and EM loan accounts will be prorated between the two accounts on the basis of:

(A) The delinquent amount owed on each, or

(B) The total amount owed on each if there are no delinquencies.

(2) Non-farm income and payments derived from the sale of real estate security, will be applied to the earliest account secured by the earliest lien covering such security. The amount to be applied to principal will be applied to the final unpaid installment(s).

(3) On partial refunds of loan advances, the amount to be applied to the principal will be applied to the final unpaid installment on the note which evidences such advance; however, a refund of an advance for current farm and home expenses repayable within the year may be applied to the principal on the first unpaid installment on such note as a regular payment.

(4) Total refunds of loan advances will be applied to the notes which evidence such advances.

(5) When nonfarm assets have been sold, the payments will be applied as set out in § 1945.156(b)(3) of Subpart D of Part 1945 of this chapter if they were sold as a condition for EM loan assistance.

(6) In applying payments from sources other than those in paragraphs (a)(2), (3), and (4) of this section the borrower has the right to select the loan account or accounts on which such payments will be applied. In the absence of the borrower's selection, such payments generally will be applied in the following order:

(i) To accounts with small balances, including recoverable costs.

(ii) To accounts with the oldest unsecured note(s).

(iii) To accounts with the oldest delinquencies.

(iv) To accounts with the oldest secured note or notes.

(7) Employees receiving collections are authorized to make exceptions to paragraphs (a)(1), (2), and (6) of this section when it is necessary to apply a part of a payment to delinquent accounts to prevent the Federal Statute of Limitations from being asserted as a defense in suits on FmHA claims.

(b) *Payments in full.* Errors of a significant amount in computation or collection will be called to the attention of the collection official by the Finance Office. The borrower's note will not be returned until the balance on the loan account is paid in full. Claims by or on behalf of the borrowers that the amounts owed have been computed incorrectly will be referred to the Finance Office.

§ 1951.11 Application of payments on real estate accounts.

(a) *Regular payments.* If a borrower owes more than one type of real estate loan, or has received initial and subsequent real estate loans on which separate accounts are maintained, payments on such accounts should be applied so as to maintain the note accounts approximately in balance at the end of the year with respect to installments due on the notes, other charges, and delinquencies.

(b) *Refunds and extra payments.* (1) Refunds will be applied to the note representing the loan from which the advance was made.

(2) Extra payments will be applied to the note secured by the earliest mortgage on the property from which the extra payment was obtained.

(3) Funds remaining from an RH grant or a combination loan and grant, after completion of development, will be refunded. If the borrower received a combination loan and grant, the remaining funds up to the amount of the grant are considered to be grant funds.

(c) *County Office actions.* (1) The collecting official will complete Form FmHA 451-1, "Acknowledgment of Cash Payment," in accordance with the FMI when cash or money orders are received as a payment.

(2) The collection official will complete Form FmHA 451-2, "Schedule of Remittances," in accordance with the FMI.

(d) *Finance Office handling.* (1) Regular payment will be handled as follows.

(i) Amounts paid on direct loan accounts will be credited to the borrower's account as of the date of Form FmHA 451-2 or for direct payments the date payment is received in the Finance Office, and will be applied first to a portion of any interest which accrues during the deferral period second to interest accrued to the date received and third to principal, in accordance with the terms of the note.

(ii) Amounts paid on insured loan accounts will be credited to the borrower's account as of the date of Form FmHA 451-2 or for direct payments the date payment is received in the Finance Office, and will be applied in the following order:

(A) Advances from the insurance funds as shown on the latest *Form FmHA 389-404*, "Analysis of Accounts Maturing." (If the collection is intended for final payment of the loan, or to pay the insurance account in connection with an assumption agreement, the collection will be applied first to the interest accrued on the advance to the date of the payment.)

(B) Principal advanced from the insurance fund.

(C) Unamortized costs.

(D) Amount due for amortized costs for taxes and insurance.

(E) Unpaid loan insurance charges, including the current year's charge, when applicable.

(F) First to a portion of any interest which accrues during the deferral period, second to accrued interest to the date of the payment on the note account and then to the principal balance of the note account in accordance with the terms of the note.

(2) Extra payments and refunds will be credited to the borrower's note account as of the date of Form FmHA 451-2 and will be applied first to a portion of any interest which accures during the deferral period, second to interest accrued to the date of the receipt and third to principal in accordance with the terms of the note. The amount to be applied to principal will be applied to the final unpaid installment(s). Extra payments and refunds will not affect the schedule status of a borrower except indirectly in connection with the amortization of a direct loan.

(3) The Finance Office will remit final payments promptly to lenders. Other collections (regular, extra, and refunds) applied to a borrower's insured note will be accumulated until the annual installment due date, and will be remitted along with any advances from the insurance fund to the lender within 30 days after the installment due date. All payments to a lender will be credited first to interest to the date of the Treasury check and then to principal. Since the application of a payment to a borrower's account with the Government and the Government's account with a lender is of a different effective date, the balance owed by a borrower to the government and by the Government to a lender ordinarily will not be the same.

§ 1951.12 Changes in the application of loan payments.

(a) *Authority to change payments.* County Supervisors and Assistant County Supervisors are hereby authorized to approve requests for changes in the application of payments between loan accounts when payments have been applied in error and such requests conform to the policies expressed in this Subpart. However, no change will be made if the payment applied in error resulted in the payment in full of any FmHA loan and the canceled note or notes have been returned to the borrower.

(b) *Form FmHA 451-7, "Request for Change in Application."* Requests for changes in application of payments will be made on Form FmHA 451-7. For requests which County Supervisors or Assistant County Supervisors are authorized to approve, the County Supervisor or Assistant County Supervisor will sign the original of Form FmHA 451-7 and forward it to the Finance Office. The Finance Office will send Form FmHA 451-26 to the County Office when the change is made on Finance Office records.

(c) *Changes by the Finance Office in application of remittances.* (1) When reapplication of collection is made by the Finance Office Form FmHA 451-8, "Journal Voucher for Loan Account Adjustments," will be prepared. Form FmHA 451-26 will be forwarded to the County Office to show the reapplication.

(2) When necessary, the Finance Office will correct Form FmHA 451-2 as prepared by the County Office.

§ 1951.13 Overpayments and refunds.

(a) The Finance Office will mail any overpayment refund check to the County Supervisor, who will verify that the refund is due before delivering the check.

(b) Borrower requests for overpayment refunds must be in writing. Borrowers will be discouraged from requesting refunds when the County Office records show that a refund is not due, however, the County Supervisor will forward any request to the Finance Office. Finance Office computations will control in determining the amount of any refund.

(c) Underpayments or overpayments of less than $10 will not be collected or refunded (except as provided in paragraph (b) of this section) since the expense of processing the action would be more than the amount involved.

§ 1951.14 Recoverable and nonrecoverable cost charges.

(a) The County Supervisor will:

(1) Prepare vouchers for recoverable and nonrecoverable cost charges according to the applicable instruction for the type of advance being made. ("Recoverable costs" is defined in § 1951.10(a) of this subpart).

(2) If a recoverable cost, show on the voucher the fund code to which the advance is to be charged.

(3) If the cost item relates to security for more than one type of account, show the code for the loan secured by the earliest promissory note (if lien secures more than one note).

(b) The Finance Office will forward Form FmHA 451-26, to the County Office when the recoverable cost charge is processed.

§ 1951.15 Return of paid-in-full or satisfied notes to borrower.

(a) *Notes not held in County Office.* When the original of the note is not held in the County Office the County Supervisor will request the Finance Office to acquire and forward the note to the County Office.

(b) *Return of notes after collection.* When a note (or loan-type account) evidencing an OL, EM, EE, EO, special livestock (SL), SW loan coded "24", or other production-type loan has been satisfied by payment in full, the County Supervisor will examine the borrower's records in the County Office and determine that the account has been satisfied before delivering the note to the borrower (See § 1962.27 of Subpart A of Part 1962 on the satisfaction of chattel security instruments). The note(s) will be returned to the borrower immediately except that:

(1) When the final payment is made in a form other than currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title and trust company, the note or notes will not be surrendered until 30 days after the date of final payment, and

(2) When notes are needed in making marginal releases or satisfactions or security instruments, the notes will be held until the instruments are satisfied.

(c) *Surrender of notes to effect collection.* (1) County Supervisors are authorized to surrender notes to borrowers when final payment of the amount due is made in the form of currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title trust company.

(2) The amount due on the note(s) to be surrendered will be confirmed with the Finance Office. County Supervisors will request the original note(s) from the Finance Office if it is not in the County Office.

(d) *Return of notes reduced to judgment.* Notes which have been reduced to judgment are a part of the court records and ordinarily cannot be withdrawn and returned to the borrower even after satisfaction of the judgment. Therefore, no effort will be made to obtain and return such notes except on the written request of the judgment debtor or debtor's attorney. Such requests will be referred to the Office of the General Counsel (OGC).

(e) *Debt settlement case.* See Part 1864 of this chapter (FmHA Instruction 456.1) for the handling of notes in debt settlement cases.

(f) *Lost notes.* (1) All promissory notes dated on or after 11-1-73 are held in the County Office. A few notes (with the exception of OL notes) are still held by investors. If a note dated prior to 11-1-73 cannot be located in the County Office and it is needed for servicing the case, the County Supervisor will write a memorandum to the Finance Office explaining why the note is needed. The request should give the name and case number of the borrower, date and original amount of the loan, type of loan and loan code.

(2) If a promissory note is lost in the County Office and it is needed for servicing a case, the State Director may authorize the County Supervisor to execute an appropriate affidavit regarding the lost note. The form of such an affidavit will be provided by OGC.

§ 1951.16 Other servicing actions on real estate type loan accounts.

(a) *Installment on note and other charges.*

(1) *Direct loan accounts.* For a borrower with a direct loan, the term "installation on note and other charges," as used in this Subpart, will be the sum of the following:

(i) Annual installment for the year as provided in the promissory note(s).

(ii) Any recoverable cost charges paid for the borrower during the year. ("Recoverable costs" is defined in § 1951.10(a) of this Subpart.)

(2) *Insured loan accounts.* "Loan insurance charge" means a separate insurance charge applying to FO and SW insured loans evidenced by promissory note forms bearing a form date before January 8, 1959. For all insured loans evidenced by note forms bearing a form date of January 8, 1959, or later, the insurance charge is called "annual charge" and is included in the interest position of the annual installment in the note. For a borrower with an insured loan, the term "Installment on note and other charge" means the sum of the following:

(i) Annual installment for the year as provided in the promissory note.

(ii) Amounts owed the Agricultural Credit Insurance Fund. These amounts are covered by the general term "Insurance Account" and consist of the following:

(A) Unpaid loan insurance charges from prior years.

(B) Loan insurance charge for the current year. The loan insurance charge is computed on the basis of the amount of the unpaid principal obligation as of the installment due date and is due and payable on or before the next installment due date.

(C) Any unpaid balance on advances from the insurance fund, including any recoverable cost charges paid for the borrower during the year.

(D) Any accrued interest on advances from the insurance fund.

(iii) The amounts owned on the insurance account must be paid by regular payments each year whether or not the note account is ahead of schedule.

(b) *Schedule status.* For direct and insured loans, a borrower will be on schedule when the sum of regular payments through the last preceding due date of the note equals the sum of installments on the note and other charges due through the same date. Such a borrower will be ahead of schedule or behind schedule when the sum of such regular payments is larger or smaller, respectively, than the sum of such installments on the note and other charges.

(c) *Real estate payments.* A borrower may make regular payments ahead of schedule at any time and use them later to forego payments or to supplement the amount available during any year for payment on the annual installment on the note and other charges. Refunds and extra payments will not be used in this way.

§ 1951.17-1951.24 [Reserved]

§ 1951.25 Review of limited resource FO and OL loans.

(a) *Frequency of reviews.* OL and FO loans will be reviewed each year at the time the analysis is conducted in accordance with Subpart B of Part 1924 of this chapter and any time a servicing action such as consolidation, rescheduling, reamortization or deferral is taken. The interest rate may not be changed more often than quarterly.

(b) *Method of review.* (1) Each loan will be considered on its own merit.

(2) The County Supervisor should consider:

(i) The borrower's income and repayment record during the preceding years;

(ii) The projections shown on the most recent Farm and Home Plan or other similar plan or operation acceptable to FmHA, in light of the previous year's projected figures and actual figures; (See Subpart B of Part 1924 of this chapter)

(iii) Whether improved production practices have been or need to be implemented;

(iv) The borrower's progress as a farmer; and

(v) All other factors which the County Supervisor believes should be considered.

(3) The Farm and Home Plan projections for the coming year must show that the "balance available to pay debts" exceeds the amount needed to pay debts by at least 10 percent before an increase in interest rate is put into effect. Borrowers that continually purchase unplanned items without the

County Supervisor's approval will have the interest rate on their loans increased to the current rate for that loan type. Borrowers that fail to provide the County Supervisor with the information needed to conduct the analysis required in Subpart B of Part 1924 of this chapter will have their interest rate on their loan increased to the current rate for the OL or FO loan as applicable. The rate may increase in increments of whole numbers to the current regular interest rate for borrowers. In the borrower's case file, the County Supervisor must document the unplanned purchases and the failure to provide information in a timely manner. The County Supervisor must write the borrower a letter which sets out the facts documented in the case file and advises the borrower that the interest rate will be increased unless the unplanned purchases cease or unless the borrower provides information in a timely manner. Whenever it appears that the borrower has a substantial increase in income and repayment ability or ceases farming, either the interest rate may be increased to the current rate for FO or LO loans, as applicable, or the borrower will be graduated from the program as provided in Subpart F of this Part.

(4) The County Office will be responsible for scheduling and completing the reviews.

(5) Borrowers who have received a deferral under § 1951.44 of this subpart will not have the interest rate increased on their limited resource loans during the deferral period.

(c) *Processing.* (1) If, after the review, the interest rate is to remain the same, no further action needs to be taken.

(2) If the interest rate is to be increased, Form FmHA 1965-22, "Information on Assumption on New Terms or Other Changes of Terms," and Form FmHA 1965-23, "Supplemental Information on Assumption and/or Change of Terms," will be completed in accordance with the FMI and sent to the Finance Office 30 days prior to the effective date of the change. When the interest rate is increased to the current rate, the loan will be recorded as a regular loan and will no longer be considered a limited resource loan. The borrower must be notified in writing at least 30 days prior to the date of the change. Exhibit B of this subpart may be used as a guide. This exhibit may be obtained from any FmHA office. The effective date of the change in interest rate will be the effective date on the Form FmHA 1965-22. The borrower must be informed of the following for each loan:

(i) The authorization for the change.

(ii) Reason for change (repayment ability, etc.)

(iii) The effective date and rate of the increase in interest.

(iv) Amount of the new installments and dates due.

(v) Right to appeal.

(3) It is not necessary to obtain a new promissory note for this change in interest rate.

§ 1951.26-1951.32 [Reserved]

§ 1951.33 Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance the loans. This section explains how to consolidate and reschedule *existing* loans providing the borrower agrees to such actions. Non program loan debtors are not eligible to receive any program benefits including consolidation or rescheduling. See § 1872.20(b)(1) of Part 1872 of this chapter (FmHA Instruction 465.1 XX B 1). (Revised)

(a) *Definitions:*

(1) Subtitle B purposes are the loan purposes stated in § 1941.16 of Subpart A of Part 1941 of this Chapter.

(2) EE operating-type loans are those made for the purposes provided in § 1945.116(a) of Subpart C of Part 1945 of this chapter.

(3) Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

(4) Consolidate means to combine and reschedule the rates and terms of two or more of the same type OL or EO loans, EE operating-type loans, or EM loans made for Subtitle B purposes for other than actual losses.

(b) *General requirements.* County Supervisors are authorized to consolidate and reschedule loans. When the County Supervisor determines that consolidation or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(1) Such action is not taken to circumvent FmHA's graduation requirements;

(2) The borrower's account is not being serviced by OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the near future;

(3) The County Supervisor determines that the borrower is making satisfactory progress or will make satisfactory progress with revised repayment terms; and

(4) The borrower is cooperating in servicing the account and is maintaining the security.

(c) *Consolidation and/or rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes including EM loss loans.*

(1) Any loans secured by real estate will not be consolidated or rescheduled, unless the County Supervisor reviews the Government's real estate lien priority and value of security and determines such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the County Supervisor should ask OGC for an opinion as to what lien position the Government will have if a new note is taken.

(2) Only loans of the same type and with the same interest rate will be consolidated.

(3) The amount of outstanding accrued interest will be added to the principal at the time of consolidation and rescheduling (the date the note is signed).

(4) Consolidated and rescheduled loans will be repaid according to the borrower's repayment ability, but never in excess of fifteen years from the date of the consolidation and/or rescheduling, except:

(i) Loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling (the date the note is signed).

(ii) EE loans may not exceed 20 years from the date of the original note.

(5) The interest rate for consolidated and/or rescheduled loans will be the current interest rate for that type of loan (in the case of an OL-limited resource loan it will be the limited resource OL loan rate) or the *original* loan note rate whichever is the lesser rate.

(6) At the time of the consolidation and/or rescheduling OL loans may be changed to a limited resource rate if the borrower meets the requirements for the limited resource interest rate.

(7) EM actual loss and SL loans will *not* be consolidated.

(8) The County Supervisor will not consolidate a loan serviced under Subpart L of this part with another loan.

(9) Loans that have been deferred under § 1951.44 of this subpart will not be consolidated or rescheduled during the deferral period. (Added)

(d) *Processing.* (1) Form FmHA 1940-17 will be prepared for notes or assumption agreements being consolidated or rescheduled in accordance with the provisions of the FMI. If the County Office does not have possession of the original note or assumption agreement, the County Supervisor will ask the Finance Office to return the original form so it is in the County Office *before Form FmHA 1940–17* is processed. Forms FmHA 1965–22 and 1965–23 will be completed and sent to the Finance Office in accordance with the provisions of the FMI.

(2) The original and County Office copy of all notes or assumption agreements that are consolidated or rescheduled, will be stamped "Consolidated", or "Rescheduled", as appropriate, by the County Office. The original instruments being consolidated or rescheduled will be filed with the borrower's new consolidated or rescheduled note and a copy filed in the borrower's case file. When the consolidated or rescheduled note has been paid in full or otherwise satisfied, it and all other instruments will be handled in accordance with the provisions of § 1951.15 of this subpart.

(3) There is no limit on the number of times a Form FmHA 1940–17 can be processed, providing the requirements for consolidation or rescheduling are met each time this form is processed.

§§ 1951.34–1951.39 [Reserved]

§ 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance loans. This section explains how the County Supervisor can reamortize existing loans. Nonprogram loan debtors are not eligible to receive any program benefits including reamortization. See § 1872.2(b)(1) Part 1872 of this Chapter (FmHA Instruction 465.1 XX B 1).

(a) *Definition.* Reamortization means to rearrange the installments of a loan which may include changing the interest rate and terms of the loan.

(b) *Requirements.* County Supervisors are authorized to reamortize loans and debts owed under assumption agreements. When the County Supervisor determines that reamortization will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(1) Such action is not taken to circumvent FmHA's graduation requirements;

(2) The borrower's account is not being serviced by OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the near future;

(3) The County Supervisor determines that the borrower is making satisfactory progress or will make satisfactory progress with revised repayment terms; and

(4) The borrower is cooperating in servicing the account and is maintaining the security.

(c) *Terms.* (1) Reamortized installments usually will be scheduled for repayment within the remaining period of the note or assumption agreement being reamortized. If any repayment is extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less, except RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(2) The FmHA's lien priority may be affected if the final due date of the original loan is changed. A State supplement will be issued to provide instructions on the effect a change in due date has on security instruments and the action necessary to retain the Government's lien priority. The State supplement will also include instructions in releasing the original security instrument when a new one is obtained.

(3) The amount of interest accrued at the time of reamortization will be added to the principal at the time of reamortization (the date the note is signed). If there are no deferred installments, the first installment under the reamortization will be at least equal to the interest which will accrue on the new principal between the date of Form FmHA 1940–17 and the next January 1.

(4) Loans that have been deferred under § 1951.44 of this subpart will not be reamortized during the deferral period.

(d) *Interest.* The interest rate will be the current interest rate in effect on the date of reamortization (the date the note is signed), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO loan rate or the original loan note rate, whichever is less. At the time of the reamortization, the loan may be changed to a limited resource rate if the borrower meets the requirements for a limited resource interest rate.

(e) *Processing.* A separate Form FmHA 1940–17 will be used for each note or assumption agreement being reamortized.

(1) Form FmHA 1940–17 may be processed provided the County Office has possession of the original note or assumption agreement being reamortized. If the County Office does not have possession of the original note or assumption agreement, the County Supervisor will ask the Finance Office to return the original form so it is in the County Office *before* Form FmHA 1940–17 is processed.

(2) Form FmHA 1940–17 will be completed, signed, and distributed as provided in the FMI.

(3) Forms FmHA 1965–22 and 1965–23 will be completed, signed and distributed as provided in the FMI.

(4) The original and County Office copy of notes or assumption agreements that are reamortized will be marked "REAMORTIZED, (date)". The original of the new Form FmHA 1940–17 will be attached to the original of the note or assumption agreement being reamortized and filed in the promissory note folder. A copy of each will be filed in the borrower's case file.

(5) There is no limit on the number of times a Form FmHA 1940–17 can be processed providing the requirements for reamortization are met each time this form is processed.

§ 1951.41 Special debt set-aside of a portion of the insured loan indebtedness of farmer program borrowers.

(a) *Period of time available.* The authorities contained in this section will be available to financially stressed FmHA farmer program borrowers (OL, FO, EO, SW, EE, EM, RL (but not association recreation loans) and/or *only* those Rural Housing (RH) loans which were made for farm service buildings) until September 30, 1985, unless extended by the Administrator.

(b) *Notice to borrowers.* Borrowers who received a Pretermination Notice but who had not been sent an acceleration notice by close of business October 19, 1984, will be sent Exhibit G with Exhibit C–1 (available in any FmHA office). County Supervisors are to send Exhibit C–1 (available in any FmHA office) of this Subpart to all farmer program borrowers with the following exceptions:

(1) Borrowers whose accounts have been accelerated prior to close of business October 19, 1984.

(2) Borrowers who have been convicted (criminally) in a court of law of converting FmHA security.

(3) Borrowers who have been determined able to graduate to other sources of credit and have been

requested to do so. If it is later determined that a borrower cannot graduate to other credit, the borrower will then be sent Exhibit C–1 (available in any FmHA office).

(4) Borrowers who owe only loans which were assumed on ineligible rates and terms, acquired by a credit sale, and/or any Other Real Estate (ORE) loan.

(5) Borrowers who are currently under the jurisdiction of a bankruptcy court.

(6) Borrowers whose files are in the OGC or U.S. Attorney's Office for legal action. If the file is later returned to FmHA without any legal action being taken, the borrower will be sent Exhibit C-1 (available in any FmHA office).

(7) Borrowers who were not indebted to FmHA on September 18, 1984.

(8) Borrowers who have voluntarily conveyed and the deed has been recorded.

Farmer Programs borrowers who are sent Exhibit C–1 (available in any FmHA office), must, within 30 days after receiving said Exhibit, request an appointment with the County Supervisor. Any borrower not requesting an appointment will not be considered for the set-aside program. This will not be appealable. County Supervisors, upon receiving a request for an appointment, will send Exhibit C–2 (available in any FmHA office) of this subpart to the borrower, setting up an appointment to discuss the set-aside program.

(c) *Definitions.* (1) Special debt set-aside used in this section means postponing payment of a portion of a borrower's insured farm loan indebtedness to FmHA, not to exceed 25 percent of the total unpaid principal and interest owed or $200,000, whichever is less, for a period of 5 years at zero percent rate of interest. Set-aside will not be considered for any debt not owed to FmHA on September 18, 1984.

(2) Typical year plan as used in this section means a farm budget which accurately reflects the borrower's planned cash flow and use of assets during the set-aside period.

(i) Production records used in the preparation of a typical year plan will be as set forth in § 1945.163(a)(1) of Part 1945, Subpart D of this Chapter. (Emergency Loan Program regulations). Verification by ASCS is not required.

(ii) Unit prices used in preparation of a typical year plan will be established by the State Director and issued as a State supplement. The State Director will consult with other USDA agencies and agricultural lenders in the State before establishing commodity prices. State Directors and Farmer Program Chiefs in adjoining States should consult with each other before releasing their established commodity price list. A typical year price list will usually be in addition to the price list prepared for annual planning purposes.

(3) Cash flow projection for the purpose of this section is a listing on a monthly, quarterly, semi-annual or annual basis, of all anticipated cash inflows, and all anticipated cash outflows both farm and non-farm for the typical year.

(4) Positive cash flow projection used in this section means that the Farm and Home Plan for the typical year shows a balance available (line 16 in Table J) of at least 110 percent of the amount needed to pay all the year's debts due including tax liability shown on Table K. For borrowers using the Coordinated Financial Statement for Agriculture (CFSA), Form FmHA 1930–2, "Cash Flow Statement," balance available (the total of lines 16, 52, and 54 less the total of lines 36 thru 47 except 46) will be at least 110 percent of debt repayment (lines 46, 48, 49, 55 and 56.)

(d) *General requirements.* County Supervisors are authorized to approve the special set-asides, provided the following requirements are met.

(1) The County Supervisor must determine that a positive cash flow projection is not possible without servicing action. The County Supervisor must then calculate the borrower's cash flow projection, using the rescheduling reamortization authorities set out in § 1951.33 and § 1951.40 of this Subpart. Next, the County Supervisor will calculate the borrower's cash flow projection, using rescheduling and reamortization at the limited resource rate, if the borrower is eligible for the limited resource rate. Not all borrowers are eligible for limited resource rates. If a positive cash flow projection can be achieved by using the rescheduling and reamortization authorities, the borrower's account will be rescheduled or reamortized (including at the limited resource rate, if eligible) but the borrower will not receive a special set-aside. The County Supervisor must thoroughly document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a positive cash flow can be achieved. *If a positive cash flow projection is possible, the borrower is not eligible for a special set-aside.* The borrowers will be given an opportunity to appeal, as provided in Subpart B of Part 1900 of this Chapter.

(2) The County Supervisor must determine whether the borrower owns any assets which do not contribute to essential family living expenses or to the maintenance of a sound farming operation. The County Supervisor must determine whether the borrower could sell those assets and, if so, for how much. The County Supervisor will then prepare new cash flow projections which take into account the sale of these assets. If a positive cash flow projection can be achieved, the borrower is not eligible for a special set-aside. The borrower will be given an opportunity to appeal, as provided in Subpart B of Part 1900 of this chapter.

(3) The County Supervisor will take the balance available shown on the cash flow projections and will subtract the amount needed to pay all the years' debts including tax liability, except the payment due on the FmHA debt. The result is the amount available to be paid on the FmHA debt. The County Supervisor will then determine how much of a borrower's total FmHA debt (principal plus interest on all loans) would have to be set-aside in order for the borrower's operation to have a positive cash flow projections during the next 5 years, with the borrower paying whatever the cash flow projections show is the amount available on the FmHA debt. Only as much of the FmHA debt will be set-aside as is needed to create a positive cash flow projection within the next 5 years. In no case will this reduction exceed $200,000 or 25 percent, whichever is less, of the borrower's total FmHA debt.

If a borrower has more than one FmHA loan, the loan with the highest interest rate after rescheduling will be considered for set-aside first. When loan(s) with less than the highest interest rate are set aside, therebu causing a higher interest rate loan(s) to be excluded from the set-aside, the County Supervisor must document in the case file the reason for taking such action.

(4) If a positive cash flow projection cannot be achieved with the maximum (25 percent or $200,000, whichever is less) special set-aside, the County Supervisor will assist the borrower in asking other creditors to voluntarily adjust their debts, as authorized in Subpart A of Part 1903 of this Chapter. If other creditors adjust their debts and a special set-aside of the FmHA debt will result in a positive cash flow projection, a special set-aside may be approved.

(5) If a positive cash flow projection during the next 5 years cannot be achieved, even with other creditors voluntarily adjusting their debts and with the maximum special set-aside (25 percent of the total FmHA debt or

$200,000, whichever is less), no portion of the debt will be set-aside. The borrower will be given an opportunity to appeal, as provided in Subpart B of Part 1900 of this chapter.

(6) In order for a borrower to receive a set-aside, the typical year plan must show that a positive cash flow can be expected during the set-aside period and that the borrower will be able to begin making payments on the set-aside portion of the debt at the end of the 5 year set-aside period. Also, the County Committee must certify on Form FmHA 440-2, "County Committee Certification or Recommendation," that the borrower meets all of the following requirements:

(i) Has acted in good faith by demonstrating sincerity and honesty in meeting agreements and promises made with FmHA;

(ii) Has been able to pay their accounts as scheduled due to:

(A) Reduction in essential farm income and/or from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(B) Reduction in income due to illness, injury or death of an individual borrower, or stockholder, member or partners who operates the farm; or

(C) Reduction in income due to natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments cannot be made.

(iii) Has applied the improvements and key practices spelled out in Item D of the Farm and Home Plan or identified in the CFSA's cash flow schedules.

(iv) Has properly maintained chattel and real estate security and properly accounted for the sale of security, including crops, livestock and livestock production.

(7) If the County Committee does not make this certification, the borrower will be given an opportunity to appeal as provided in Subpart B or Part 1900 of this Chapter.

(8) The best lien obtainable will be taken on all assets except for household goods and personal automobiles needed for family living. Also, principal partners and stockholders will have to sign the new note as individuals. Borrowers who refuse to comply with these requirements will not be given a special set-aside and this denial is not appealable.

(9) Special set-asides of more than $100,000 will be reviewed by the District Director, who will note his/her recommendation in the file.

(10) A borrower will be given only one special set-aside. A borrower who receives a special set-aside of less than the maximum will not be able to obtain a larger amount of set-aside at a later date unless original calculations were in error.

(11) Exhibit F (available in any FmHA office) of this Subpart will be completed when a set-aside is approved.

(e) *Processing*. (1) Borrowers who are eligible for a special set-aside will have their loans rescheduled or reamortized in accordance with § 1951.33 and § 1951.40 of this Subpart, except that the original note(s) will be marked "Reamortized with Set-Aside" or "Rescheduled with Set-Aside." If the borrower is eligible, the loan will be rescheduled or reamortized at the limited resource interest rate. The County Supervisor will contact the Finance Office to find out the amount of interest and principal owed on the date of approval of the special set-aside. All loan servicing actions approved in connection with the debt set-aside must be dated the same date. See Exhibit D of this subpart for example(s) of a FO and Limited Resource OL with set-aside.

(2) Form FmHA 440-2 will contain the following statement: "The borrower meets the criteria for obtaining a special set-aside." The list of criteria found in § 1951.41(d)(6) will either be written on or attached to Form FmHA 440-2.

(3) The date of approval is when the 5 year set-aside period begins. The date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940-17, "Promissory Note" and on Form FmHA 1951-6, "Borrower Account Description Flag."

(4) The County Supervisor will send the Finance Office Form FmHA 1951-6 prepared according to the FMI.

(5) The County Supervisor will record and maintain a record of approved special set-asides, in accordance with FmHA Instruction 1905-A, available in any FmHA office.

(f) *Finance Office Actions*. (1) The Finance Office will establish the set-aside portion of the debt as a separate account, in accordance with Form FmHA 1951-6.

(2) The Finance Office will remove the borrower's name from its delinquency report.

(3) The Finance Office will provide the County Office with a quarterly status report for each borrower receiving a set-aside.

(4) Six months prior to the end of the set-aside period, the Finance Office will notify the County Supervisor of the amount and date of the upcoming borrower's installment(s) due.

(5) The interest rate on the set-aside portion of the note, after the set-aside period will be the same on the non-set-aside portion.

(g) *Cancellation of special set-aside*. (1) Borrowers who incur debt or purchase items not planned for in the farm budget without the County Supervisor's approval, violate any of the covenants contained in any security instruments, loan agreements of cease farming will have their set-aside cancelled by the County Supervisor.

(2) The County Supervisor will give notice to the borrower of FmHA's intention to cancel the set-aside, setting forth the specific facts requiring cancellation and inform the borrower of appeal rights. Exhibit B-1 and B-2 of Part 1900 of Subpart B of this chapter will be used. If the borrower does not appeal or if the decision to cancel is upheld in an appeal, the borrower will be notified in writing of cancellation of the set-aside. The actual cancellation is not appealable.

(3) The County Office will be responsible for notifying the Finance Office of the cancellation using a properly executed Form FmHA 1951-6 prepared according to the FMI.

(h) *Servicing*. (1) Notes which are rescheduled and set-aside in accordance with this section will not be consolidated during the set-aside period.

(2) Notes which are rescheduled and not set-aside in accordance with this section may be rescheduled or reamortized in accordance with §§ 1951.33 and 1951-40, of this subpart during the set-aside period. The rescheduling or reamortization may be at the Limited Resource rate. The set-aside will stay in effect, but will not be increased or extended beyond the original five year term. The County Office will forward to the Finance Office Form FmHA 1951-4 any time the interest rate is changed on a note during the set-aside period. The top of the form will be marked "Interest Change in Set-Aside" in red.

(i) *Deficiency Judgments*. (1) Interest will begin to accrue (at the higher of the rate or the judgment rate) on the set-aside portion if FmHA receives a deficiency judgment.

§§ 1951.42-1951.43 [Reserved]

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF and EE loans.

All borrowers are expected to repay their loans according to planned repayment schedules. However, borrowers may request a deferral at the FmHA County Office when circumstances occur which will not permit borrowers to pay as scheduled. Loan deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization or debt set-aside, if available, in accordance with this subpart will not provide the cash flow needed to service the debt, operate the farm and provide family living expenses.

(a) *Definitions.*

(1) Cash flow projection for the purpose of this section is a listing on a monthly, quarterly semi-annual or annual basis, of all anticipated cash inflows, and all anticipated cash outflows—both farm and non-farm for the typical year.

(2) Loan Deferral: An approved delay in making regularly scheduled payments.

(3) Unduly impaired standard of living: A condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, corporations and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, corporation or cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(b) *Conditions.* In order to be considered for a deferral, the borrower must meet all of the following conditions:

(1) The reasons for needing the deferral are due to circumstances which are beyond the borrower's control. Circumstances beyond a borrower's control are limited to one of the following:

(i) A reduction of income which reduces the operation's cash flow to a point where outflows exceed inflows and which causes the need for a deferral. All other debt restructuring alternatives such as consolidation, rescheduling, reamortization or debt set-aside, if available, of any existing loan(s) must have been considered. A reduction of income does not by itself mean that the borrower is eligible for a deferral. A reduction in income due to inadequate or poor financial management decisions, such as untimely marketing practices, is not an acceptable reason for a deferral since the borrower had control over the situation. Acceptable reasons for reduction of income which could make a borrower eligible for a deferral include:

(A) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(B) Illness, injury or death of an individual borrower, stockholder, member or partner who operated the farm; or

(C) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made; or

(D) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that the scheduled payments cannot be made.

(ii) Unplanned, but essential, farm expenses and/or, in the case of individual borrowers, essential family living expenses. Unplanned expenses are those which were not listed in the most current farm plan of operation and can be paid from the authorized sale of chattel security. Proceeds for such sales can be used for unplanned purposes only if FmHA releases such proceeds in accordance with Subpart A of Part 1962 of this chapter governing disposition of chattel security. These unplanned expenses may result from:

(A) Accident, death, illness or injury to an individual borrower or dependent member of the borrower's family (stockholders, members or partners of an entity borrower are excluded except when that stockholder member or partner is the manager of the farming operation); or

(B) Cost of repair of uninsured damage to the security (crops are excluded), provided the loss occurred because adequate insurance coverage was not available.

(2) The need for the deferral must be temporary. To be "temporary" means that the borrower will be able to show to the satisfaction of FmHA that the debt will be paid current by the end of the deferral period or that the new payments, as established by using the servicing alternatives of consolidation, rescheduling or reamortization, can be resumed at the end of the deferral period.

(3) Continuing to make the loan payments as presently scheduled without change will unduly impair the borrower's standard of living.

(4) The borrower must attend a conference with the County Supervisor. At the conference the borrower must provide sufficient financial and production records and cash flow projections to allow FmHA to make a decision on the request for a deferral.

(5) The borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors in accordance with Subpart A of Part 1903 of this chapter.

(c) FmHA's determinations. The FmHA official must determine that the borrower:

(1) Acted in good faith in trying to meet agreements with FmHA and made an honest effort to pay but cannot due to reasons beyond the borrower's control;

(2) Requested a deferral of payments and appropriately documented the conditions causing the unduly impaired standard of living;

(3) Before experiencing the hardship, had paid, when due, all real estate taxes and property insurance premiums, and otherwise has complies with the other conditions of the loan documents;

(4) Will be able to make scheduled payments after the deferral and plans to continue to operate the farm;

(5) Applied recommended and recognized successful production and financial management practices;

(6) Properly maintained and accounted for security;

(7) Has disposed of all nonessential assets in accordance with agreements made with FmHA, and applied the proceeds to the FmHA loan account(s) or paid other creditors in accordance with lien priorities or other approved agreements;

(8) Demonstrated by a realistic farm plan of operation, cash flow or other financial projections acceptable to FmHA that during the deferral period, the borrower can at least pay essential family living and/or farm operating expenses (for partnerships, corporations and cooperatives living expenses are excluded), repay any loans made during the deferral period for operating and family living expenses, meet all installments owed other creditors, and FmHA loans not deferred.

(d) *Borrower's financial and production history.* The showing under paragraph (b) of this section and the determination under paragraph (c) of this section will be based on:

(1) The borrower's financial and production history as reflected by the FmHA case file;

(2) A farm plan of operation, or similar financial and operating documents acceptable to FmHA, which details the borrower's actual current financial situation and the productive capacity of the farming or ranching operation;

(3) Additional farm plan(s) of operation, or similar financial and

operating documents acceptable to FmHA which detail realistic projections of the farming or ranching operation after the temporary situation is alleviated;

(4) Other information as needed by FmHA such as financial or production records, copies of leases, marketing plans, agreements with other lienholders, etc.; and

(5) Other information the borrower presents at the conference with the County Supervisor.

(e) *Loans to be deferred.* It may not be necessary to defer all the borrower's loans. Deferrals will only be approved for a sufficient number of loans which will provide a cash flow needed under this section.

(f) *Additional and subsequent deferrals.* (1) If, during the period of the initial deferral, the borrower is unable to make the scheduled payments and meets the conditions for an initial deferral, other loans may be deferred. However, the deferral period for such other loans will not extend beyond the expiration date of the initial deferral.

(2) Borrowers may request and have subsequent deferrals approved on a loan(s) provided the conditions of this section are met and at least two years have lapsed from the date of expiration of prior deferrals unless prior concurrence of the State Director is obtained.

(g) *Special debt set-aside loans.* If a borrower has requested a deferral for a loan that has a portion of the debt set-aside under § 1951.41 of this subpart the set-aside will be canceled at the time the deferral is granted. The borrower may retain the set-aside loan and request a deferral on other loans. A borrower who requests a deferral of a set-aside loan must agree in writing to the cancellation of the set-aside.

(h) *Approval authority.* County Supervisors are authorized to approve or disapprove requests for deferrals of loan payments after consideration of all of the items in this section. A request will be denied if the borrower(s) failed to attend the required conference without good reason and/or does not provide the required information within 30 calendar days from date of request. This denial will not be appealable.

(i) *Term and interest rate.* A deferral will be for five (5) annual installments except for additional deferrals as provided for in subsection (f) of this section. Interest that accrues during the deferral period will not bear interest during the remaining term of the loan. However, interest will begin to accrue (at the higher of the note rate or the judgment rate) on the accrued interest if FmHA receives a deficiency judgment.

(j) *Processing.* (1) If the deferral is approved, all loans being deferred will be rescheduled, reamortized or consolidated as applicable. Interest that has accrued will be added to the principal as of the date the new note(s) will be signed. All FmHA loans must be current on or before the date the note is signed except for vouchered recoverable cost items that cannot be rescheduled. All delinquent loans will be rescheduled, reamortized, consolidated or deferred as applicable to bring the account current. The County Supervisor will contact the Finance Office to find out the amount of interest and principal owed on the date the new note(s) will be signed. This date will be the date of the beginning period of the deferral. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral. The County Supervisor will determine the amount of interest that will accrue during the deferral period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment for the remaining period of the loan. The FMI for Form FmHA 1940-17 has examples (IV, V, and X) which explain this. The Finance Office will apply the payments made on the note in accordance with this subpart. The following addendum will be typed, completed, signed by the borrower and attached to the promissory note:

Addendum For Deferred Interest

Addendum to promissory note dated ________ in the original amount of $______ at an annual interest rate of ____ percent. This agreement amends and attaches to the above note. $______ of each regular payment on the note will be applied to the interest which accrued during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

____

Borrower

____

Borrower

The Finance Office will be notified of the deferral by the County Office sending Forms FmHA 1965-22, 1965-23, and 1951-6 to the Finance Office. The borrower will be notified by letter. The Finance Office will remove the borrower's name from the delinquency report and will set up a subaccount for interest that accrues during the deferral period.

(2) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with Subpart A of Part 1905 of this chapter. The Finance Office will provide the County Office with a quarterly status report for each borrower receiving a deferral.

(3) If the request for a deferral is denied, the borrower will be informed in writing of the specific facts supporting the denial and also will be notified of the appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(4) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's upcoming installment on the FmHA debt.

(5) The County Supervisor must notify the Finance Office of any cancellation of a deferral.

(k) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by Subpart B of Part 1924 of this chapter, the County Supervisor will determine whether the borrower has had a substantial increase in income and repayment ability. If an increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will ask (in writing) the borrower to sign a Form FmHA 440-9, "Supplementary Payment Agreement," within 30 days of the date of the written request. If the borrower does not sign a Form FmHA 440-9 within the required time, the borrower's account will be liquidated in accordance with Subpart A of Part 1962 or Subpart A of Part 1872 of this chapter.

§ 1951.45-1951.50 [Reserved]

Attachments: Exhibits A, [Reserved], B, C-1, C-2, D, E [Reserved], F, and G.

Note.—Exhibits C-1, C-2, D, F, and G do not appear in the Code of Federal Regulations.

Exhibit B to Subpart A—Notice of Change in Interest Rate

(insert date)

Notice of Change in Interest Rate

____

(insert borrower's address)

Dear (insert borrower's name)

Your promissory note dated ________ for the original amount of ______ dollars ($) provides for a change in interest rate for a limited resource loan in accordance with the Farmers Home Administration regulations.

Effective (insert date) the interest rate on this loan will be ____ percent (%) on the unpaid principal balance. Your installment due January 1, 19____, will be ______ dollars ($). This change in interest rate is for the reason indicated below.

☐ Increase in repayment ability as per Farm and Home Plan dated ______.

☐ (insert reason if other than above for increase in interest rate).

You may appeal this action by writing to (hearing officer) (address) within 30 calendar days of the date of this letter, giving the reason why you believe this matter should be decided differently. This time may be extended if you cannot notify the hearing officer within 30 days for reasons beyond your control.

Sincerely,

County Supervisor

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

45. In § 1951.252, paragraphs (a) through (d) are redesignated as (b) through (e) and a new paragraph (a) is added to read as follows:

§ 1951.252 Definitions.

(a) *Farmer program loans* means Farm Ownership (FO) Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), and Special Livestock (SL) Loans and/or Rural Housing loans for farm service buildings (RHF).

* * * * *

46. In § 1951.262 the introductory texts of paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) When a borrower with other than farmer program loans fails to:

* * * * *

(b) For borrowers with other than farmer program loans, the official authorized to approve foreclosure will review those cases submitted to his or her office and determine what action must be taken on the basis of the FmHA notes, security instruments, and/or loans agreements signed by the borrower and the facts and recommendations provided by the servicing official.

* * * * *

(c) When a farmer program loan borrower fails to provide information following the receipt of both FmHA Guide Letters 1951-1 and 1951-2, or fails to graduate after receipt of both FmHA Guide Letters 1951-5 and 1951-6, or letters of similar format, the County Supervisor will prepare the documents required for OGC's review listed in § 1951.265 of this subpart. The County Supervisor will forward the case to the District Office for the District Director's concurrence for legal action to liquidate the account. If the District Director concurs with the decision of the County Supervisor, the case will be forwarded to OGC through the State Office for their concurrence.

(1) If the District Director or the OGC do not concur with the County Supervisor's decision to take legal action to liquidate the account, the District Director after consultation with the Farmer Program Staff will return the case to the County Supervisor with appropriate instructions for the future servicing of the case. The County Supervisor will notify the borrower of the withdrawal of the request in accordance with § 1951.261 of this subpart.

(2) If the District Director and OGC concur with the County Supervisor's decision to take legal action to liquidate the account, the case will be returned to the County Supervisor. The County Supervisor should use the appropriate statement of Exhibit B-2 to Subpart B of Part 1900 of this chapter and use it to notify the borrower of FmHA's intent to accelerate the account and to foreclose for failure to graduate or failure to provide requested information. Any appeal will be conducted in accordance with the regulations in the Subpart B of Part 1900 of this chapter. If the borrower does not appeal the notice of intent to accelerate or if the adverse decision is upheld, the County Supervisor will send the case to the District Director for acceleration of the account in accordance with Subpart A of Part 1955 of this Chapter except that Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," will *not* be used. Exhibit D of Subpart A of Part 1955 (available in any FmHA office) will be completed in accordance with the FMI to delete the statement regarding deferrals.

(3) If the borrower appeals the County Supervisor's decision to accelerate and liquidate the account and the decision is reversed, the District Director after consultation with the Farmer Program Staff will provide the County Supervisor appropriate instructions on the future servicing of the case.

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Farmer Programs

47. Subpart L is added to read as follows:

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

Note.—Exhibits A, B, C and D available from any FmHA office and do not appear in the Code of Federal Regulations.

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

§ 1951.551 Purpose.

This Subpart prescribes the policies and procedures for servicing insured Operating (OL), Farm Ownership (FO), Soil & Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), and Economic Opportunity (EO) loans, and Rural Housing Loans for farm service buildings (RHF) (referred to as farmer program ((FP) loans) when it is determined that the borrower was not eligible for all or part of the financial assistance received in the form of a loan or subsidy granted. It does not apply to guaranteed loans.

§ 1951.552 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without borrower being released from liability or where liquidation did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan or interest subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note or assumption agreement.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former active borrower whose loan(s) has(have) been paid in full or assumed by another party(ies), and who does not have an outstanding account in the records of the Finance Office.

(g) *Unauthorized assistance.* Any loan of interest subsidy received for which there was no authorization, for which the borrower was not eligible, or which was obligated from the wrong appropriation or fund. An unauthorized interest subsidy is a benefit received through a loan that was made at a lower interest rate than that to which the borrower was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§ 1951.553 Policy.

When it is determined that unauthorized assistance has been received, an effort must be made to collect from the borrower the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired.

§§ 1951.554–1951.555 [Reserved]

§ 1951.556 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), USDA; through reviews made by Farmers Home Administration (FmHA) personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a borrower. If FmHA has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the OIG will be requested, as provided for in FmHA Instruction 2012–B (available in any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.557 of this Subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the borrower will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the borrower;

(b) Submission of false information by the borrower;

(c) Submission of inaccurate or false information by another party on the borrower's behalf such as a seller, developer, real estate broker, or attorney, when the borrower did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.557 Notification to borrower.

(a) Collection efforts will be initiated by the County Supervisor by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the borrower by "Certified Mail, Return Receipt Requested," with a copy to the State Director; and, for a case identified in an OIG audit report, copies to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all borrowers who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to Exhibit D of this Subpart (available in any FmHA office); and

(3) Establish an appointment for the borrower to discuss with the County Supervisor the basis for FmHA's claim; and give the borrower an opportunity to provide facts, figures, written records or other information which might refute FmHA's determination that the assistance received was unauthorized.

(b) If the borrower meets with the County Supervisor, the County Supervisor will outline to the borrower why the assistance was determined to be unauthorized. The borrower will be given an opportunity to provide information to refute FmHA's findings. When requested by the borrower, the County Supervisor may grant additional time for the borrower to assemble documentation. When an extension is granted, the County Supervisor will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

§ 1951.558 Decision on servicing actions.

When the County Supervisor is the same official who approved the unauthorized assistance, the District Director must review the case before further actions are taken by the County Supervisor.

(a) *Payment in full.* If the borrower agrees with FmHA's determination and agrees to repay in a lump sum, the County Supervisor may allow a reasonable period of time (not to exceed 90 days) for the borrower to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this Subpart (available in any FmHA office). The County Supervisor will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," for application to the borrower's account as an extra payment. After a borrower repays an unauthorized interest subsidy benefit in a lump sum, the loan will be serviced in accordance with § 1951.561(a)(3) of this Subpart. In the case of unauthorized assistance which was identified in an OIG audit, the County Supervisor will report the repayment as outlined in § 1951.568(a) of this Subpart.

(b) *Continuation with borrower.* If the borrower agrees with FmHA's determination or is willing to repay but cannot repay the unauthorized assistance in a lump sum within a reasonable period of time, continuation may be authorized. Servicing actions outlined in § 1951.561 of this Subpart will be taken, provided all of the following conditions are met:

(1) The borrower did not provide false information as defined in § 1951.552(d) of this subpart.

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraphs (a) or (b) of this section, or if the borrower refuses to execute the documents necessary to make account adjustments or establish an obligation to repay the unauthorized assistance as provided in § 1951.561 of this subpart, or when a borrower fails to respond to the initial letter prescribed in § 1951.557 of this subpart within 30 days, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The County Supervisor will send Exhibit B of this subpart (available in any FmHA office.)

(ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in § 1955.10 or § 1955.20 as applicable, of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Forms FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities", FmHA 1924-25, "Notice of Intent to Take Adverse Action", or FmHA 1924-26, "Borrower's Acknowledgement of Notice of Intent to Take Adverse Action."

(iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in § 1955.15 of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Forms FmHA 1924-14, 1924-25 or 1924-26.

(iv) Forced liquidation will not be pursued when:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and recoverable costs charged to the account, is less that $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (c)(1)(B) of this section, a request for an exception under § 1951.569 of this Subpart will be made.

(v) Account adjustments will be made by FmHA without the signature of the borrower according to § 1951.568(a)(5) of this Subpart. In these cases, the borrower will be notified by letter of the actions taken with a copy of Forms FmHA 1951-12, "Correction of Loan Account," or 1951-13, "Change in Interest Rate," as applicable, enclosed to reflect the adjustments.

(2) *(Inactive borrower or active borrower with unsecured loan such as collection-only or unsatisfied balance after liquidation).* The County Supervisor will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect.

§§ 1951.559-1951.560 [Reserved]

§ 1951.561 Servicing options in lieu of liquidation or legal action.

When all of the conditions outlined in § 1951.558(b) of this subpart are met, servicing options outlined in this section will be considered; and accounts will be serviced according to this section and § 1951.568 of this Subpart.

(a) *Active borrower.*—(1) *Entire loan unauthorized.* When the entire loan is determined to be unauthorized because the borrower was not eligible for the type loan received or because the loan was approved for unauthorized purposes, the following alternatives will be considered in the order listed:

(i) Execution of Form FmHA 1965-11, "Accelerated Repayment Agreement," according to § 1872.17(d) of Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1 paragraph XVII D), for loans secured by real estate; or rescheduling according to Subpart A of this part, for loans not secured by real estate, based on the borrower's repayment ability.

(ii) Refinancing with another type of FmHA loan to repay the unauthorized loan, if the borrower is eligible for the type loan being considered.

(iii) When the case cannot be handled according to subparagraphs (a)(1)(i) or (a)(1)(ii) of this section, continuance with the loan on the existing terms may be approved, and the loan will, thereafter, be serviced as an authorized loan.

(2) *Portion of loan unauthorized.* When a portion of a loan is determined to be unauthorized, the Finance Office will be instructed to separate the authorized and unauthorized portions of the loan, setting up each as a separate loan at the correct interest rate. The correct interest rate will be taken from Exhibit C of this Subpart (available in any FmHA office) as of the date of loan approval. All payments made on the loan being corrected will be reversed and reapplied to the unauthorized portion. If after reaplication of payments the unauthorized portion is not paid in full, the options outlined in paragraph (a) of this section may be considered for repayment of the balance of the unauthorized portion: and the authorized portion will be serviced as an outlined loan. See § 1951.568 of this subpart for instructions on setting up separate accounts.

(3) *Unauthorized interest subsidy benefits received.* When the borrower was eligible for the loan, but should properly have been charged a higher interest rate than that shown in the debt instrument on all or a portion of the loan, resulting in the receipt of unauthorized interest subsidy benefits, the case will be handled as outlined below. The unauthorized interest rate will be corrected to the interest rate in effect on the date the original loan was approved as outlined in paragraph (a)(3)(iii) of this section.

(i) When a subsidized interest rate was incorrectly charged on the entire loan, all payments made will be reversed and reapplied at the correct interest rate; and future installments will be scheduled at the correct interest rate. After reapplication of payments, the loan will be treated as an authorized loan.

(ii) When a subsidized interest rate was incorrectly charged on only a portion of the loan, the Finance Office will be instructed by the County Supervisor to separate the loan into two portions, with the correct interest rate established for the portion having the incorrect subsidized interest rate. All payments made on the loan being adjusted will be reversed and reapplied, first to the portion with the corrected interest rate. After reapplication of payments at the correct interest rate, both portions will be serviced as authorized loans.

(iii) Incorrect interest rates will be corrected as follows referring to Exhibit C of this Subpart (available in any FmHA office) for interest rates in effect on specific dates:

(A) For disaster Emergency (EM) loans, to the rate for EM annual production loans.

(B) For Operating Loans—Limited Resource (OL-LR), to the rate for regular Operating Loans (OL).

(C) For Farm Ownership—Limited Resource (FO-LR), to the rate for regular Farm Ownership (FO).

(D) For all other types of FP loans, to the correct rate for the type loan involved which was in effect when the loan was approved.

(b) *Inactive borrower.* When the individual or entity does not have an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the inactive borrower execute a promissory note in the amount of the assistance determined to be unauthorized according to § 1951.557 of this subpart. This note will bear interest at the rate which was in effect for the type loan associated with the

unauthorized assistance when it was approved. The term will not exceed 10 years or the term of the original loan, whichever, is the shorter term.

(2) Take the best lien obtainable on any collateral having equity value to secure the note.

§§ 1951.562–1951.567 [Reserved]

§ 1951.568 Account adjustments and reporting requirements.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case of unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Only cases of unauthorized assistance identified by OIG will be reported to the Finance Office by submission on Form FmHA 1951–12 completed in accordance with the FMI. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. "Loan" refers to an account with an active borrower unless specified as "inactive." If the borrower has arranged to repay in a lump sum, the payment will be remitted with Form FmHA 451–2, according to the FMI. Form FmHA 1951–12 will reflect the amount and the Schedule Number.

(1) *Entire loan unauthorized.* When the entire loan is unauthorized because the borrower was not eligible or because the loan was approved for unauthorized purposes, and continuation is authorized, the Finance Office will be advised as follows:

(i) *Accelerated repayment agreement or loan rescheduled.* If the borrower has executed Form FmHA 1965–11 for loans secured by real estate; or has executed Form FmHA 1951–4 for loans not secured by real estate, the form(s) will be prepared and distributed according to the FMIs, attaching the original form(s) to Form FmHA 1951–12.

(ii) *Continuation with loan on existing terms.* When it is determined that all the conditions outlined in § 1951.558(b) of this Subpart are met and continuation with the loan on the existing terms is approved, the servicing official will submit Form FmHA 1951–12 to the Finance Office to reflect this.

(2) *Portion of loan unauthorized.* When a loan is to be separated into authorized and unauthorized portions, the authorized portion will retain the original loan number, and the original principal amount will be reduced by the unauthorized amount. A new loan in the unauthorized amount will be established as the unauthorized loan with the next available number assigned by the Finance Office. Payments made on the loan being adjusted will be reversed and reapplied first to the unauthorized loan. If the reapplication of payments does not pay the unauthorized loan in full, upon receipt of Forms FmHA 451–26, "Transaction Record," showing the balances of the authorized and unauthorized loans, the servicing official will proceed under the provisions of § 1951.561(a)(2) and will submit a revised Form FmHA 1951–12 (along with a copy of the original Form FmHA 1951–12).

(3) *Unauthorized subsidy benefits received.* (i) *Entire loan.* When the interest rate on an entire loan is changed, Form FmHA 1951–12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the original loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan.

(ii) *Portion of loan.* When the interest rate on only a portion of a loan must be changed, the portion which has the incorrect interest rate will be established as a new loan at the correct interest rate shown on Form FmHA 1951–12. Payments made on the loan being adjusted will be reversed and reapplied first to the loan with the corrected interest rate. Both loans will then be treated as authorized loans.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, Form FmHA 1951–12 will be submitted to advise the Finance Office to establish the unauthorized assistance account. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.558 (c)(1)(iv)(A) or (c)(1)(iv)(B) of this subpart, will be adjusted according to § 1951.561 (a)(2) or (a)(3) of this subpart and this section, and the adjustments will be reflected on Form FmHA 1951–12. In this instance *only,* account adjustments will be made even though the borrower does not sign Form FmHA 1951–12 and any related documents.

(6) *Establishment of account of inactive borower.* (i) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Form FmHA 1951–12 will reflect this, and the Finance Office will establish or the account according to the terms indicated on Form FmHA 1951–12.

(ii) When a judgment is obtained against such a borrower Form FmHA 1955–20, "Notice of Judgment," will be prepared and distributed in accordance with the FMI to establish a judgment account.

(7) *Payments on authorized and unauthorized loans concurrently.* When a borrower has both authorized and unauthorized loans outstanding, installments may be scheduled to be paid concurrently on all loans. Payments may be adjusted by means of rescheduling or reamortizing to coincide with the borrower's repayment ability according to servicing regulations for the type loan involved. The County Supervisor will complete Form FmHA 451–2 so that payments received will be applied first to the unauthorized loan account to maintain it current, with the remainder of the payment applied to the other loan(s).

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. For reporting purposes, the following applies:

(i) For an unauthorized loan account established as provided in paragraphs (a) (1), (2), or (6) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, it will be reported on the next scheduled report *only,* giving the amount collected.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, the unpaid balance will be reported initially and the collections and status will be included on each scheduled report until the account is paid in full.

(C) When continuation with the loan on existing terms is approved, or after a loan is rescheduled or reamortized, it will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(3) of this section, when the unauthorized amount has been repaid, or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, it will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(b) *Nonaudit cases.* Basically, servicing options which may be used are the same for audit and nonaudit cases; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an account or reinstatement of an inactive account are necessary. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Each payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the servicing official will receive Forms FmHA 451-26 from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate is necessary, retroactive to the date of loan closing on all or a portion of a loan, Form FmHA 1951-13 will be completed according to the FMI and submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) For accounts to be rescheduled or reamortized, Forms FmHA 1951-4, or 1965-11, as applicable, will be prepared and submitted in accordance with the respective FMI.

(iii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the County Supervisor will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iv) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1) of this section will be serviced according to the applicable servicing regulations for the type loan involved.

§ 1951.569 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely effect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.570-1951.599 [Reserved]

§§ 1951.600 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number *0575-0102.*

Exhibits A, B, C and D

Note.—Exhibits A, B, C, and D do not appear in the Code of Federal Regulations.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

48. In § 1951.612 paragraph (a)(1)(i) is revised to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) *Servicing SFH cases involving unauthorized assistance.*

(1) * * *

(i) If the recipient's income was above the moderate-income level but the recipient was otherwise eligible and the loan was approved for authorized purposes, a loan closed *before* November 30, 1983, will be converted to an "above-moderate" RH loan. A loan in this category which was closed after November 30, 1983, will be converted to "Non Program" (NP) loan. In either case, the interest rate from Exhibit C of this subpart (available in any FmHA office) which was in effect on the date the loan was approved will be used and the final due date of the original loan will be unchanged. The change in interest rate will be accomplished according to § 1951.618 (a)(1)(iii) or (b)(1)(i) of this Subpart, as applicable. If unauthorized interest credits are also involved, that will be serviced simultaneously according to paragraph (a)(2) of this section so that payments are reversed and reapplied only once. A delinquency created through these actions will be serviced according to Subpart G of Part 1951 of this chapter.

* * * * *

49. In § 1951.618 paragraph (a)(2) is revised to read as follows:

§ 1951.618 Account adjustments and reporting requirements.

* * * * *

(a) * * *

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on a loan is changed, Form FmHA 1951-12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan. When a loan is converted to above-moderate RH or NP, the loan must be identified and serviced by the servicing official accordingly.

* * * * *

PART 1955—PROPERTY MANAGEMENT

50. The authority citation for Part 1955 continues to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

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

51. § 1955.2 is revised to read as follows:

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or by foreclosure as outlined in this Subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA in accordance with applicable portions of § 1955.10 of this subpart. Non program loan debtors will be liquidated as provided in § 1872.20(b)(6) of Part 1872 of this chapter (FmHA Instruction 465.1).

52. In 1955.3, Paragraph (d) is revised to read as follows:

§ 1955.3 Definitions.

* * * * *

(d) *Loans to individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), and Rural Housing loans for farm service buildings (RHF), whether to individuals or entities, referred to in this Subpart as Farmer Programs (FP) loans; Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

* * * * *

53. In § In 1955.10, the introductory text and paragraph (f)(2)(ii)(A)(*3*) are revised and paragraph (d)(8) is redesignated as (d)(9) and a new paragraph (d)(8) is added to read as follows:

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

Voluntary conveyance is a method of liquidation by which title to security is transferred to the government. FmHA will not make a demand on a borrower to voluntarily convey. A voluntary conveyance should be accepted only after all available servicing actions outlined in the respective program servicing regulations have been used or considered and it is determined the borrower will not be successful. The borrower should also have been encouraged to transfer or sell the property (subject to any prepayment restrictions of the respective loan program). The borrower will be informed by the servicing official of apparent equity in the property, if any. Before a voluntary conveyance from a farmer program loan borrower can be accepted, the borrower must be sent Form FmHA 1924-14, "Notice—Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities." This form will not be sent to borrowers who received unauthorized assistance as determined under Subpart L of Part 1951 of this chapter.

* * * * *

(d) * * *

(8) Farmer program loan borrowers who voluntarily convey after receiving Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," must properly complete and return Form FmHA 1924-26, "Borrowers Acknowledgement of Notice of Intent to Take Adverse Action."

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(A) * * *

(*3*) Borrower's offer of voluntary conveyance (consisting of applicable items outlined in paragraphs (d)(1) through (d))(8) of this section);

* * * * *

54. In § 1955.15, the introductory text, the introductory text of paragraphs (b), (d)(2) and (d)(3) are revised and paragraph (d)(2)(iv) is added to read as follows:

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

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; and when either a net recovery can be made or when failure to foreclose would adversely affect FmHA programs in the area. Also, in Farmer Program cases, (except graduation cases under Subpart F of Part 1951 of this Chapter), the borrower must have received Forms FmHA 1924-14, 1924-25, and 1924-26, and any appeal must have been concluded.

* * * * *

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

* * * * *

(d) * * *

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to Exhibits B, C, D, or E of this subpart (available in any FmHA office), as appropriate, to be signed by the official who approved the foreclosure. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with § 1872.17(e) of Part 1872 of this chapter (FmHA Instruction 465.1). The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under Subpart A of Part 1962 of this chapter, that the Finance Office will be sent a copy of Exhibit D or E. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases.) If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official and, *except* for Farmer Program cases, to the hearing officer identified in the notice according to Subpart B of Part 1900 of this chapter. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

* * * * *

(iv) If a borrower has both a non-farmer program loan and a Farmer Program loan(s) that are secured with the same real estate, the non-farmer program loan must be accelerated at the same time the borrower is sent Form FmHA 1924-25. One appeal hearing and one review will be held for both adverse actions.

(3) *Offers by borrower after acceleration of account.* After the account is accelerated, the servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State Supplement is issued to specify this requirement. If payments are *mistakenly* accepted and credited to the borrower's account, no waiver or

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

* * * * *

55. In § 1955.18 paragraph (f) is revised to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(f) *Unsatisfied account.* Farmer program loan borrowers will be sent a letter similar to Exhibit F of this subpart (available in any FmHA office). Unsatisfied account balances will be settled in accordance with Part 1864 of this Chapter (FmHA Instruction 456.1) of the account will be reclassified to collection-only by submitting Form FmHA 404-1, "Case Reclassification," to the Finance Office. After reclassification to collection-only, Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," or for MFH, Form FmHA 1944-54, "Multiple Family Housing Change of Borrower Name/Case Number/Project Number/Loan Number," will be submitted to the Finance Office to furnish the borrower's new address, if known. Collection-only accounts will be serviced in accordance with § 1951.7 of Subpart A of Part 1951 of this chapter.

* * * * *

56. In § 1955.20 the introductory text of paragraph (b) and paragraph (f)(2)(v) are revised to read as follows:

§ 1955.20 Acquisition of chattel property.

* * * * *

(b) *Voluntary conveyance.* Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens *and* the borrower can be released from liability under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA in order to accept Voluntary Conveyance of chattels is not authorized. Before a voluntary conveyance from a farmer program loan borrower can be accepted, the borrower must be sent form FmHA 1924-14.

* * * * *

(f) * * *

(2) * * *

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

* * * * *

Subpart B—Management of Property

57. In § 1955.80 paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 1955.80 Management of inventory chattel property.

* * * * *

(d) * * *

(1) *Losses and increases.* Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955-50, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part and recorded on the original list of acquired chattel property in the inventory file.

Subpart C—Disposal of Inventory Property

§ 1955.103 [Amended]

58. § 1955.103 is amended in the last sentence of paragraph (h), by removing the words, "Other Real Estate (ORE)" and inserting in their place the words "Non Program Loans (NP)".

§ 1955.107 [Amended]

59. § 1955.107 is amended in the last sentence of paragraph (a) by removing the words "ORE loans" and inserting in their place the words, "NP loans."

§ 1955.108 [Amended]

60. § 1955.108 is amended in paragraph (g) by removing the words, "ORE loans" and inserting in their place the words, "NP loans".

§ 1955.118 [Amended]

61. § 1955.118 is amended in paragraph (g) by removing the words, "ORE loans" and inserting in their place the words, "NP loans."

PART 1960—GENERAL [RESERVED]

62. Part 1960 is removed and reserved.

PART 1962—PERSONAL PROPERTY

63. The authority citation for Part 1962 is revised to read as follows

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

Subpart A—Servicing and Liquidation of Chattel Security

64. Sections 1962.1 through 1962.50 are revised to read as follows (Exhibits A, B, and C remain unchanged and Exhibit D is added but does not appear in the Code of Federal Regulations. Exhibit D will be available in any FmHA office.):

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

Note.—Exhibits A, B, C, and D do not appear in the Code of Federal Regulations.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.1 Purpose.

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of Farmers Home Administration (FmHA) chattel security, Economic Opportunity (EO) loan property, and note only loans.

§ 1962.2 Policy.

Chattel security, EO property and note only loans will be serviced to accomplish the loan objectives and protect FmHA's financial interest. To accomplish these objectives, security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise satisfactorily meets the loan obligations including repayment.

§ 1962.3 Authorities and responsibilities.

(a) *Redelegation of authority.* Authority will be redelegated to the maximum extent possible consistent with program requirements and available resources. The State Director, District Director and County Supervisor are authorized to redelegate, in writing, any authority delegated to them in this subpart to any employee determined by them to be qualified.

(b) *Responsibilities.*—(1) *FmHA personnel.* The State Director, District Director and County Supervisor are responsible for carrying out the policies and procedures in this subpart.

(2) *Borrower.* The borrower is responsible for repaying the loans, maintaining, protecting, and accounting to FmHA for all chattel security, and complying with all other requirements specified in promissory notes, security instruments, and related documents.

(c) *Exception authority.* The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this auhority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1962.4 Definitions.

(a) *Abandonment.* Voluntary relinquishment by the borrower of control of security or EO property without providing for its care.

(b) *Acquired chattel property.* Former security or EO property of which FmHA has become the owner (See § 1955.20 of *Subpart A of Part 1955* of this chapter).

(c) *Borrower.* Individual(s), corporation, cooperative, or partnership that is (are) liable for the loan(s) or any part thereof.

(d) *Chattel security.* Chattel property which may consist of, but is not limited to, inventory; accounts; contract rights; general intangibles; crops; livestock; fish; farm, business, and recreational equipment; and supplies, and which is covered by financing statements and security agreements, chattel mortages, and other security instruments.

(e) *Civil action.* Court proceedings to protect FmHA's financial interests such as obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure. Bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate and similar proceedings to settle and distribute estates of incompetents or of decendents under a will, or otherwise, and pay claims of creditors are not included.

(f) *Criminal action.* Prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes. These include but are not limited to violations such as:

(1) Unauthorized sale of security.

(2) Purchase of security with intent to defraud and without payment of the purchase price to FmHA;

(3) Falsification of assets or liabilities in loan applications;

(4) Application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose;

(5) Decision after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use;

(6) By scheme, trick, or other device, covering up or concealing misuse of funds or authorized dispositions of security or EO property or other illegal action; or

(7) Any other false statements or representations relating to FmHA matters. To establish that a criminal act was committed by selling EO property, it is necessary to show that the borrower, at the time the loan agreement or the check on the supervised bank account was signed, intended to sell the property in violation of the loan agreement. The Federal criminal statute of limitations bars institution of criminal action 5 years after the date the act was committed. Unauthorized disposition of even minor items by the borrower will be considered criminal violations.

(g) *Default.* Failure of the borrower to observe the agreements with FmHA as contained in notes, security instruments, and similar or related instruments. Some examples of default or factors to consider in determining whether a borrower is in default are when a borrower:

(1) Is delinquent, and the borrower's refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming or other

operation, or other circumstances within the borrower's control.

(2) Ceases to conduct farming or other operations for which the loan was made or to carry out approved changed operations.

(3) Has disposed of security or EO property without FmHA approval, has not cared properly for such property, has not accounted properly for such property or the proceeds from its sale, or taken some action which resulted in bad faith or other violations in connection with the loan.

(4) Has progressed to the point to be able to obtain credit from other sources, and has agreed in the note or other instrument to do so but refuses to comply with that agreement.

(h) *EO property.* Nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

(i) *EO property essential for minimum family living needs.* Nonsecurity chattel or real property required to provide food, shelter, or other necessities for the family or to produce income without which the family would not have such necessities. This includes livestock, poultry, or other animals used as food or to produce food for the family or to produce income for minimum essential family living needs; modest amounts of real property needed for family shelter or to produce food or income for minimum essential family living needs, and items such as equipment, tools, and motor vehicles, which are of minimum value and are essential for family living needs or to produce income for that purpose. Any such item of a value in excess of the minimum need may be sold and a portion of the sale proceeds used to purchase a similar item of less value to meet such need. The remainder of the proceeds will be paid on the EO loan.

(j) *Farm income.* Proceeds from the sale of chattel security which is normally sold annually during the regular course of business such as crops, feeder livestock and other farm products.

(k) *Farmer Program loans.* These loans and Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Economic Emergency (EE), Emergency (EM), Economic Opportunity (EO) and Special Livestock (SL) loans and Rural Housing loans made for farm service buildings (RHF).

(l) *FmHA.* The United States of America, acting through the Farmers Home Administration and its predecessor administrative agencies.

(m) *Foreclosure sale.* Act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

(n) *Liquidation.* The act of selling security or EO property to close the loan when no further assistance will be given; or instituting civil suit against a borrower to recover security or EO property or against third parties to recover security or its value or to recover amounts owed to FmHA; or filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings to close the loan.

(o) *Office of the General Counsel (OGC).* The Regional Attorneys, Attorneys-in-Charge, and National Office staff of the Office of the General Counsel of the United States Department of Agriculture.

(p) *Purchase money security interest.* Special type of security interest which, if properly perfected, takes priority over an earlier-perfected security interest. A security interest is a purchase money security interest to the extent that it is taken by the seller of the collateral to secure all or part of its purchase price or by a lender who makes loans or is obligated to make loans or otherwise gives value to enable the debtor to acquire the particular collateral or obain rights in it. Such value must be given not later than the time the debtor acquires the collateral or obtains rights in it.

(q) *Repossessed property.* Security or EO property in FmHA's custody, but still owned by the borrower.

(r) *Security.* Also means "Chattel security" when appropriate.

§ 1962.5 Security instruments.

County Supervisors are responsible for maintaining security instruments that will cover all security, including replacements, increases, and other after-acquired property, and for obtaining additional security as needed. They will execute continuation, extension, or renewal of security instruments as needed to protect FmHA's security interests.

(a) *Financing statement.* An FmHA Financing Statement is effective as notice for 5 years from the date of filing. A new statement needs to be taken and filed only if the debt is to be secured by property not described specifically or by type, or by crops growing or to be grown, or fixtures located or to be located on land not described on the filed statement.

(b) *Continuing the financing statement.* A filed statement must be continued to notify third parties after the original 5-year period. Form FmHA 462-12, "Statements of Continuation, Partial Release, Assignment, Etc.," must be filed within 6 months before the end of the original 5-year period. On filing Form FmHA 462-12, the filed Financing Statement is effective for 5 more years after the date to which the original filing was effective. Successive Continuation Statements may be filed to continue the notice to third parties. A lien search is unnecessary provided the Continuation Statement is properly filed. Form FmHA 462-11, "Request for Continuation Statement Filing Fee," may be used to notify the borrower to continue the Financing Statement and to submit the amount of the filing fee.

(c) *Security agreement.* A new security agreement will be taken when:

(1) Property not covered by specific description or the printed language of the previous security agreement is to serve as security for the debt; or

(2) It is necessary to obtain or maintain a security interest in crops; or

(3) It is necessary to supplement the security agreement to obtain an asset for security. A State supplement will be issued when considered necessary by the State Director and OGC to further explain the situations requiring the taking of an additional security agreement. Such additional security agreement usually will be taken at about the time of the annual inspection of the security required by § 1962.16(a) of this subpart; or

(4) An initial Operating (OL) loan or Emergency (EM) loan is made to an applicant, including a paid-in-full OL or EM borrower.

(d) *Chattel mortgage.* In those States which require the use of chattel mortgages, such a mortgage may be extended or renewed by obtaining a new chattel mortgage or by using a form approved for this purpose by OGC. However, it is preferable to renew or extend chattel mortgages by obtaining new ones unless there are intervening liens or other legal reasons. A State supplement will be issued stating the actions to follow to ensure that:

(1) FmHA liens and their priority are maintained by renewing or extending security instruments or by obtaining new instruments.

(2) Lien searches are made as necessary to determine that FmHA will obtain the required priority of liens.

§ 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by FmHA lien.* (1) When additional chattel property not presently covered by an FmHA lien is available and needed to protect FmHA's interest, the County Supervisor will obtain one or more of the following:

(i) A lien on such property.

(ii) An assignment of the proceeds from the sale of agricultural products when such proceeds are not covered by the lien instruments.

(iii) An assignment of other income, including Agricultural Conservation Program payments.

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect FmHA interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) *Lien search.* When a lien is taken on chattel property not covered by an FmHA lien, a lien search will be made. It will not be needed, however, if crops or other chattel property are covered by a filed FmHA Financing Statement but not by an FmHA security agreement or assignment of income. The search will be made at a time which will assure that FmHA obtains the desired lien on chattel property as set forth by a State supplement.

(c) *Assignments of upland cotton, rice, wheat and feed grain payments.* Borrowers may assign Agricultural Stabilization and Conservation Service (ASCS) payments under ASCS upland cotton, rice, wheat and feed grain programs.

(1) Obtaining assignments. Assignments will be obtained as follows:

(i) In selected cases in counties agreed to by FmHA State Directors and ASCS State Committees,

(ii) Only when it appears necessary to collect the FmHA operating-type loans,

(iii) Only for the crop year for which FmHA operating-type loans are made, and

(iv) For the full amount of the applicable upland cotton, rice, wheat, and feed grain programs, including the advance and/or final payment.

(2) Selecting counties. State Directors will inform ASCS State Committees of the counties in which FmHA desires to obtain assignments from borrowers. When counties have been agreed to by FmHA State Directors and ASCS State Committees, the State Directors will notify the appropriate County Supervisors about obtaining the assignments. The County Supervisors then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them not later than loan closing. Special efforts will be made to obtain the bulk of assignments before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs.

(ii) Obtain assignments from selected borrowers on Form FmHA 1962-8, "Upland Cotton, Rice, Wheat and Feed Grain Programs—Assignments."

(3) Releasing assignments and handling checks.

(i) The County Supervisor will inform the ASCS County Office that it is releasing its assignment whenever a borrower pays FmHA the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made jointly to the producer and FmHA. Such checks may be endorsed by both parties and FmHA. Such checks may be endorsed by both parties and the proceeds used as indicated on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security."

§ 1962.7 Securing unpaid balances on unsecured loans.

The County Supervisor will take a lien on a borrower's chattel property in accordance with § 1962.6 of this subpart if it is necessary to rely on such property for the collection of the borrower's unsecured indebtedness, or if it will assist in accomplishing loan objectives.

§ 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Such liens will be taken only when the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

(a) *Documentation.* Before taking real estate as additional security for an FmHA loan, the following information will be put in the running record:

(1) Facts justifying the real estate lien;

(2) An estimate of the present market value of the real estate to be mortgaged (no appraisal of the property to be mortgaged is needed);

(3) A brief description of any existing liens on the property and the unpaid balance on the debts secured by such existing liens; and

(4) Name of the titleholder and how title of the property is held. (Title evidence is not required.)

(b) *Forms.* Form FmHA 427-1 (State), "Real Estate Mortgage for ______" will be used for each real estate lien taken as additional security unless a State supplement requires a form of mortgage comparable to that which secures the existing loans. The notes evidencing the FmHA loans for which the additional security will be taken will be described in the same mortgage.

§ 1962.9 Liens on chattel property as security for a real estate loan.

Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)," and *Form FmHA 440A25,* "Financing Statement (carbon-interleaved)," or Form FmHA 440-25, "Financing Statement," as appropriate, will be used in Uniform Commercial Code (UCC) States. State supplements may provide for using other forms in Louisiana, Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

§§ 1962.10-1962.11 [Reserved]

§ 1962.12 Marking ASCS peanut and tobacco marketing cards.

The County Supervisor will mark borrowers' ASCS peanut and tobacco crop marketing cards when FmHA advances loan funds or subordinates its crop lien for the purpose of financing the production of the crops. The marking of cards is optional in cases other than the above when FmHA has a crop lien.

(a) *Marking cards.* Just before ASCS prepares the cards, the FmHA County Office will give the appropriate ASCS County Office lists of the names and addresses of FmHA borrowers whose cards are to be marked and inform the office that FmHA will mark the cards of each borrower whose name is on the list before delivery. After FmHA determines that the cards are ready for delivery, the County Supervisor or someone designated by the County Supervisor will go to the ASCS County Office and:

(1) Stamp or insert "FmHA lien" in script in indelible ink on the cards for peanuts and tobacco, except flue-cured and burley tobacco, wherever decided by the FmHA County Supervisor and the ASCS County Office Manager.

(2) Stamp or insert "FmHA lien" in script in indelible ink on borrower's Form MQ 76, "Tobacco Marketing Card," for flue-cured and burley tobacco. The stamp will be placed on the left at the bottom of the signature strip under "Tobacco Marketing Card."

(3) If the borrower satisfies the lien or repays the amount due the current year, stamp "canceled" across "FmHA lien" followed on the same line by the name of the official making the cancellation and the date.

(b) *Notice to borrowers.* The County Supervisor will inform borrowers of marking arrangement, including the requirements for canceling the lien notice on the card.

(c) *Notice to buyers.* Whenever possible, the County Supervisor will explain these arrangements personally to buyers (warehousemen and dealers in the case of tobacco) in the area. The County Supervisor will also explain that the lien notice on the cards is not in place of the notice given by filed or recorded lien instruments but is a courtesy and is to provide them with readily available current information. However, this information may not always be accurate and commodities covered by a card not stamped "FmHA lien" may still be subject to an FmHA lien. If too many buyers are in the area to enable the County Supervisor to make such a personal explanation, the County Supervisor may write them a letter explaining the arrangements.

§ 1962.13 Lists of borrowers given to business firms.

Lists of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards.

(a) The list will contain the statement: "The crop and chattel liens or financing statements of the Farmers Home Administration are recorded or filed as required by law. This list of borrowers is furnished only as a convenience. It may be incomplete or inaccurate as of any particular date. The fact that a name is not on this list does not necessarily mean that the Farmers Home Administration does not have security interest in or lien on the crops, livestock, and other chattels."

(b) Lists will be sent by Form FmHA 462-3, "List of Farmers Home Administration Borrowers," or the County Supervisor may consider it advisable to personally deliver and explain the form and list to the buyers. The County Supervisor will update all lists that have been distributed by notifying buyers in writing, on Form FmHA 462-14, "Change in List of Farmers Home Administration Borrowers," at least every 3 months, of the names of borrowers to add and to delete.

§ 1962.14 Account and security information in UCC cases.

Within 2 weeks after receipt of a written request from the borrower, FmHA must inform the borrower of the security and the total unpaid balance of the FmHA indebtedness covered by the Financing Statement.

(a) If FmHA fails to provide the information, it may be liable for any loss caused the borrower and, in some States, other parties, and also may lose some of its security rights. The UCC provides that the borrower is entitled to such information once every 6 months without charge, and the FmHA may charge up to $10 for each additional statement. However, FmHA provides them without charge. The requested information goes on Form FmHA 462-10, "Farmers Home Administration's Answer to Request for Information."

(b) Although the UCC only requires FmHA to give information pursuant to the borrower's written request, FmHA will also answer oral requests. Furthermore, the UCC does not prohibit giving this information to others who have a proper need for it, such as a bank or another creditor contemplating advancing additional credit to the borrower.

§ 1962.15 [Reserved]

§ 1962.16 Accounting by County Supervisor.

(a) *County Supervisor's responsibilities.* The County Supervisor is responsible for maintaining a current record of each borrower's FmHA security. All chattel security will be inspected at least annually by the County Supervisor. The inspection will be recorded in the running record of the borrower's file. More frequent inspections should be made for delinquent borrowers or borrowers that have been indebted for less than one full crop year. At the time of the annual inspection the County Supervisor will discuss the provisions of §§ 1962.17 and 1962.18 of this subpart with the borrower, and the borrower and County Supervisor will complete and sign Form FmHA 1962-1, in accordance with § 1924.57(b) of Subpart A of Part 1924 of this chapter if it has not been previously completed for the year. If a borrower does not plan to dispose of any chattel security, the form should be completed to show this and should be signed. When the County Supervisor has other contacts with the borrower, the County Supervisor should also check for dispositions and acquisitions of security, the form should be completed to show this and should be signed. Changes will be recorded on the form, dated and initialed by the borrower and the County Supervisor. The purpose of all inspections is to:

(1) Verify that the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

(b) *Dispositions.* The County Supervisor will record all dispositions of chattel security on Form FmHA 1962-1, and on the file copy of the security agreement or chattel mortgage. The original security instrument must not be altered. Additional acquired chattel security should be entered on the file copy of the security agreement or chattel mortgage and must be described on subsequent security instruments.

(c) *Unapproved dispositions.* Unapproved dispositions of security will be handled in accordance with §§ 1962.18 and 1962.49 of this subpart.

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) *General.* The borrower must account for all security and will be instructed of this requirement by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. When the borrower fails to account properly for security, the County Supervisor will take the actions required in § 1962.18 of this subpart. Releases of sales proceeds will automatically be terminated when either Exhibit D or E to Subpart A of Part 1955 of this chapter is sent to the borrower. Termination of such releases will not occur prior to that time.

(b) *Use of Form FmHA 1962-1.* (1) County Supervisors are authorized to approve or disapprove dispositions of FmHA chattel security in accordance with this subpart. The County Supervisor with the assistance of the borrower, or in certain cases the District Director (see § 1924.57(b)(3) of Subpart A of Part 1924 of this chapter), will complete Form FmHA 1962-1 to show how, when and to whom the borrower will sell, exchange or consume security and use sales proceeds (including milk sales proceeds) and insurance proceeds derived from the loss of security. The five conditions set out in that form must all be met. These conditions are: (1) The proceeds from the sale, if any, are used for the purposes and in the amount set forth on the form; (2) a current farm and home plan or other similar plan of operation acceptable to FmHA, if required by the County Supervisor, has been completed and signed by the borrower and FmHA; (3) the borrower's projected income and expenses are based on the borrower's proven record of production and financial management; (4) the borrower is utilizing the key production and financial management practices required by FmHA; and (5) the property is sold or exchanged for its present market value. The conditions set out in paragraph (b)(2) of this section must also be met.

(2) Sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to a prior lienholder and which come to FmHA, can be used for any of the following purposes:

(i) Proceeds can be applied to the FmHA debt.

(ii) Proceeds can be used to purchase property better suited to the borrower's needs if FmHA will acquire a lien on the new property. The new property, together with any proceeds applied to the FmHA indebtness, will have a value to FmHA at least equal to the value of the lien formerly held by FmHA on the old security.

(iii) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(iv) Proceeds can be used to pay for essential farm and/or family living (family living expenses are excluded for partnerships, corporations and cooperatives) expenses necessary for the continued operation of the farm in accordance with the FmHA approved *current* year's farm and home plan or other similar plan of operation. If no current farm and home plan is in the file, one must be developed in accordance with § 1924.57 of Subpart A of Part 1924 of this chapter.

(v) Property can be exchanged for property which is better suited to the borrower's needs if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(vi) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that FmHA obtains a lien (or assignment) on the livestock and livestock products at least equal in value to the lien on the crops.

(3) The borrower must maintain records of dispositions of property and the actual use of proceeds and must make these records available to FmHA at the end of the period covered by the Form FmHA 1962-1, or when requested by FmHA. The County Supervisor will complete the "Actual" columns on that form, indicating approval or disapproval, making sure that the dispositions of property and uses of proceeds were as agreed upon. If they were not, the County Supervisor will take the actions required by § 1962.18 of this subpart. On the form, the County Supervisor will note approval or disapproval of each disposition.

(4) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received, as shown on Form FmHA 1962-1, the borrower will notify the County Supervisor. Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, and Form FmHA 1962-1 will be revised to reflect the changes.

(5) If the borrower wants to sell, exchange or consume property in a way different from that shown on Form FmHA 1962-1, the borrower must get FmHA's permission, in advance. Form FmHA 1962-1 will be revised, dated and initialed by the borrower and the County Supervisor. The County Supervisor will indicate approval or disapproval of the change. Permission will be granted if the five conditions set out in that Form have been met and if the requirements of paragraph (b)(2) of this section have been met.

(c) *Release of liens.* (1) Liens will be released by the County Supervisor when security is sold, exchanged or consumed, provided the conditions set out on Form FmHA 1962-1 and in this subpart are met.

(2) Junior FmHA liens on chattels and crops serving as security for FmHA loans can be released when such property has no present or prospective security value or enforcement of the FmHA lien would be ineffectual or uneconomical. The following information will be documented in the running case record:

(i) The present market value of the chattels or crops, as determined by the County Supervisor, on which FmHA has a valueless junior lien.

(ii) The names of the prior lienholders, amount secured by each prior lien, and the present market value of any property which serves as security for the amount. The value of all property which serves as security for amounts owed to prior lienholders must be considered to determine whether the junior FmHA lien has any present or prospective value.

(3) Liens obtained through a mutual mistake can be released. The reasons for the release must be documented in the running case record.

(4) Liens can be released when there is no evidence of an existing indebtedness secured by the lien in the records of the FmHA County, State, or Finance Office.

(5) Liens on separate items of chattels can be released to another creditor for purposes set out in paragraph (b)(2)(iv) of this section when it has been determined by a current appraisal that the value of the remaining security is substantially greater than the remaining FmHA debt.

(d) *Processing the release of chattel security.* (1) If the borrower or an interested third party requests a release of specific items which must be recorded under the UCC or chattel mortgage laws, Form FmHA 462-12, "Statements of Continuation, Partial Release, Assignments, etc.," Form FmHA 460-1, "Partial Release," or other Forms approved by OGC and required by State statute will be used. Care must be used to be sure that only specific items are released; for example, if a borrower requests a release of five cows, make sure that not all the cattle are released from the FmHA lien. When specific items are listed on the security agreement, the County Supervisor should record the disposition on the *work copy* of the security agreement and on Form FmHA 1962-1.

(2) Assignments and consent to payment of proceeds will be processed under Subpart A of Part 1941 of this chapter and recorded on Form FmHA 1962-1.

(i) When it is necessary to temporarily amend Form FmHA 441-18, "Consent to Payment of Proceeds From Sale of Farm Products," or Form FmHA 441-25, "Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest," Form FmHA 462-9, "Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products," will be used. All amendments of assignment agreements will be made on forms approved by OGC. The State Director will issue a State Supplement with the advice of OGC and prior approval of the National Office on the use of other forms. The original form after completion will be forwarded directly to the person or firm making the payment against which the assignment is effective, and a copy will be kept in the borrower's case file. All amendments of assignment agreements will be approved and recorded on Form FmHA 1962-1. Conditions of this section must be met. The County Supervisor will see that payments are made in accordance with the original consent when the amendment period expires. Normally, a temporary amendment will not exceed a six month period.

(ii) When FmHA is not expecting payment from the proceeds of a product on which it has a lien but the purchaser of the product inquires about payment, a letter should be written to the purchaser as follows:

The Farmers Home Administration (FmHA) has a security interest in the (name of product) being sold to you by (name and address of borrower), but at the present time is not looking to the proceeds from the sale of that product for payment on the debt owned to this agency. Therefore, until further notice, it will not be necessary for you to make payment to FmHA for such product.

(e) *Releases of liens on wool and mohair marketed by consignment.*—(1) *Conditions.* Liens on wool and mohair may be released when the security is marketed by consignment, provided all the following conditions are met:

(i) The producer assigns to FmHA the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs.

(ii) The producer assigns to FmHA the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair.

(iii) The producer and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the producer and FmHA.

(2) *Authority.* The County Supervisor may execute releases of the Government's lien on wool and mohair on Form FmHA 462-4, "Assignment, Acceptance, and Release." Since Form FmHA 462-4 is not a binding agreement until executed by all parties in interest, including the producer, the broker and the Government, the County Supervisor may execute it before other parties sign it.

(f) *Notice of termination of security interest to purchasers of farm products under consents or assignments upon payment in full.* County Supervisors will notify purchasers of farm products as soon as the FmHA has received payment in full of indebtedness for collection of which it has accepted assignments or consents to payment of proceeds from the sale of the farm products. When Form FmHA 441-18 is in effect under the UCC, the notice to the purchaser will be made on Form FmHA 460-8, "Notice of Termination of Security Interest in Farm Products." When assignments have been used, the notice to the purchaser will be by letter or by forms prescribed by State Supplements.

(g) *Release of FmHA's interest in insurance policies.* When an FmHA lien on property covered by insurance has been released, the County Supervisor is authorized to notify the insurance company of the release.

§ 1962.18 Unapproved disposition of chattel security.

When the County Supervisor learns that a borrower has made a disposition of chattel security in a manner not provided for on Form FmHA 1962-1 or becomes aware of the misuse of proceeds by a borrower, corrective action must be taken to protect the Government's interest.

(a) *Notice to borrowers.* When a borrower has not properly accounted for the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by use of a letter similar to Guide Letter 1962-A-5.

(1) If the borrower makes restitution or provides sufficient information to enable the County Supervisor to post-approve the transaction on Form FmHA 1962-1, no further action will be taken against the borrower. Post-approval can only be given under the conditions set out in § 1962.17(b) of this subpart. Only one such transgression can be allowed in any period covered by the Form FmHA 431-2, or other similar plan of operation acceptable to FmHA, between annual security inspections, whichever is appropriate, and this must be made clear to the borrower.

(2) If the borrower does not make restitution, if the County Supervisor cannot post-approve the transaction, or if the borrower makes a second unauthorized disposition of security or misuse of proceeds after settling the first offense as provided in paragraph (a)(1) of this section, the County Supervisor immediately must take the following action:

(i) Proceed in accordance with § 1962.49 of this subpart and

(ii) Place the borrower's name on the Unapproved Disposition of Security Log in accordance with paragraph (b) of this section.

(b) *Unapproved Disposition of Security Log.* Each County Office must maintain a log of borrowers who have made unapproved dispositions of chattel security.

(1) The following information must be included in the log:

(i) The borrower's name and address;

(ii) The date the unapproved disposition was discovered;

(iii) The item disposed of;

(iv) The amount of proceeds from the disposed item, the use of proceeds and the name and address of the purchaser, if known;

(v) The date that Guide Letter 1962-A-5 was sent to the borrower and date(s) of personal contact(s) with the borrower regarding the unapproved disposition;

(vi) The date the case was referred to the State Office; and

(vii) All subsequent actions until the case is concluded.

(2) Subsequent offenses by the same borrower must be entered separately on the log.

(3) The borrower's name must remain on the log for at least two calendar years from the date the unapproved disposition was discovered and the conclusion of the matter.

(4) The County Supervisor will forward a copy of the log to the State Director quarterly (January 1, April 1, July 1 and October 1). New additions to the log since the previous submission to the State Office should be circled in red. Repeat offenders will have a red star marked by their names.

(5) The State Director will maintain a log of the Unauthorized Disposition of Security. Upon receipt of the logs from the County Office, the State Director will list the information in the State Office log, and immediately forward a current copy of the logs to the Office of Inspector General—Regional Office—Investigation.

§ 1962.19 Claims against Commodity Credit Corporation (CCC).

This section is based on a Memorandum of Understanding between CCC and FmHA (see Exhibit A of this subpart). The memorandum sets forth the procedure to follow when producers sell or pledge to CCC as loan collateral under the Price Support Program, commodities on which FmHA holds a prior lien, and when the proceeds, or an agreed amount from them, are not remitted to FmHA to apply against the producer's indebtedness to FmHA. In addition to the procedures outlined in Exhibit A, the following apply:

(a) *County Office action.* (1) Claims will not be filed with CCC until it is determined that the amount involved cannot be collected from the borrower. Therefore, after preliminary notice is given of this fact to CCC by the State

Director, the County Supervisor will make immediate demand on the borrower for the amount of the CCC loan or the portion of it which should have been applied to the borrower's account. If payment is made, the State Director will be notified.

(i) If payment is not made, the County Supervisor will determine whether or not the case should be liquidated in accordance with § 1962.40 of this subpart. Any liquidation action will be taken immediately. If the borrower has no property from which recovery can be made through liquidation or, if after liquidation, an unpaid balance remains on the indebtedness secured by the commodity pledged or sold to CCC, the County Supervisor will make a full report to the State Director on Form FmHA 455-1, "Request for Legal Action," with a recommendation that a claim be filed againt CCC. However, if the indebtedness is paid through liquidation action, the State Director will be notified by memorandum.

(ii) If the facts do not warrant liquidation action, the State Director will be notified, and a recommendation will be made that no claim be filed against CCC.

(2) On receiving information from the State Director that CCC has called the borrower's loan, the County Supervisor will act to protect FmHA's interest with respect to the commodity if CCC is repaid.

(b) *State Office action.* (1) The State Director, on receipt of reports and recommendations from the County Supervisor, will:

(i) If in agreement with the County Supervisor's recommendation not to file a claim against CCC or if notice is received that the indebtedness has been paid, forward notice to CCC.

(ii) If in agreement with the County Supervisor's recommendation to file a claim against CCC, refer the case to OGC with a statement of facts.

(iii) If OGC determines that FmHA holds a prior lien on the commodity and the amount due on its loan is not collectible from the borrower, send CCC a copy of the OGC memorandum with a complete statement of facts supporting the claim through the applicable ASCS office or notify CCC if the OGC memorandum does not support FmHA's claim.

(2) The State Director will notify the County Supervisor promptly on receiving information from CCC that the borrower's loan is being called.

(3) If collection cannot be made from the borrower or other party (see paragraph 5 of Exhibit A of this Subpart), the State Director will give CCC the reasons, FmHA will then be paid by CCC through the applicable ASCS office.

§ 1962.20-1952.25 [Reserved]

§ 1962.26 Correcting errors in security instruments.

The County Supervisor may use Form FMHA 462-12, to correct minor errors in a financing statement when the errors are not serious (i.e., a slightly misspelled name). OGC will be asked to determine whether or not such errors are in fact minor. The County Supervisor may also use Form FmHA 462-12 to add chattel property to the financing statement (i.e., a new type or item of chattel or crops on land not previously described).

§ 1962.27 Termination or satisfaction of chattel security instruments.

(a) *Conditions.* The County Supervisor may terminate financing statements and satisfy chattel mortgages, chattel deeds of trust, assignments, severence agreements and other security instruments when:

(1) Payment in full of all debts secured by collateral covered by the security instruments has been received; or

(2) All security has been liquidated or released and the proceeds properly accounted for, including collection or settlement of all claims against third party converters of security, even though the secured debts are not paid in full. This includes collection-only and debt settlement cases; or

(3) The U.S. Attorney has accepted a compromise offer in full settlement of the indebtedness and has asked that action be taken to satisfy or terminate such instruments; or

(4) FmHA has a financing statement or other lien instrument which describes the real estate upon which crops are located but neither the borrower non FmHA has an interest in the crops because the borrower no longer occupies or farms the premises described in the lien instrument. Such action will only relate to the crops.

(b) *Form of payment.* (1) Security instruments may be satisfied or the financing statements may be terminated on receipt of final payment in currency, coin, U.S. Treasury check, cashier's or certified check, bank draft, postal or bank money order, or a check issued by a party known to be financially responsible.

(2) When the final payment is tendered in a form other than those mentioned above, the security instruments will not be satisfied until 15 days after the date of the final payment. However, in UCC States the termination statement will be signed and sent to the borrower within 10 days after receipt of the borrower's written request but not until the 10th day unless it previously has been ascertained that the payment check or other instrument has been paid by the bank on which it was drawn. (See subsection (c) of this section for the reason for the 10-day requirement.)

(c) *Filing or recording termination statements.* Financing statements will be terminated by use of Form FmHA 462-12 if provided by a State supplement. (1) Under UCC provisions if FmHA fails to give a termination statement to the borrower within 10 days after written demand, it will be liable to the borrower for $100 and, in addition, for any loss caused to the borrower by such failure unless otherwise provided by a State supplement. In the absence of demand for a termination statement by the borrower, a termination statement will be delivered to the borrower when the notes have been paid in full.

(2) However, if FmHA has been meeting the borrower's annual operating credit needs in the past and expects to do so the next year, the financing statements need not be terminated in the absence of such demand unless a loan for the succeeding year will not be made or earlier termination is required by a State supplement.

(d) *Filing or recording satisfactions.* Satisfactions of chattel mortgages and similar instruments will be made on Form FmHA 460-4, "Satisfaction," or other form approved by the State Director. The original of the satisfaction form will be delivered to the borrower for recording or filing and the copy will be retained in the borrower's case file. However, if the State supplement based on State law requires recording or filing by the mortgagee, a second copy will be prepared for the borrower and the original will be recorded or filed by the County Supervisor. When State statutes provide that satisfactions may be accomplished by marginal entry on the records of the recording office, or when Form FmHA 460-4 is not legally sufficient because special circumstances require some other form of satisfaction, County Supervisors are authorized to make such satisfactions according to State supplements. In such cases, Form FmHA 460-4 will not be prepared but a notation of the satisfaction will be made on the copy of Form FmHA 451-1, "Acknowledgment of Cash Payment," or Form FmHA 456-3, "Journal Voucher for Write-Off or Judgment," which will be retained in the borrower's case folder.

(e) *Satisfaction or termination of lien when old loans cannot be identified.* When a request is received for the satisfaction of a crop or chattel lien, or for the termination of a financing statement and the status of the account secured by the lien cannot be ascertained from County Office records, the County Supervisor will prepare a letter to the Finance Office reflecting all the pertinent information available in the County Office regarding the account. The letter will request the Finance Office to tell the County Supervisor whether the borrower is still indebted to FmHA and, if so, the status of the account. If the Finance Office reports to the County Supervisor that the account has been paid in full or otherwise satisfied or that there is no record of an indebtedness in the name of the borrower, the County Supervisor is authorized to issue a satisfaction of the security instruments on Form FmHA 460-4 or other approved form or to effect the satisfaction by marginal release, or a termination on Form FmHA 462-12 as appropriate.

§ 1962.28 [Reserved]

§ 1962.29 Payment of fees and insurance premiums.

(a) *Fees.* (1) Security instruments. Borrowers must pay statutory fees for filing or recording financing statements or other security instruments (including Form FmHA 462-12, or other renewal statements) and any notary fees for executing these instruments. They also must pay costs of obtaining lien search reports needed in properly servicing security as outlined in this subpart. Whenever possible, borrowers should pay these fees directly to the officials giving the service. When cash is accepted by FmHA employees to pay these fees, Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search and Releasing Fees," will be executed. If the borrower cannot pay the fees, or if there are fees referred to in paragraph (a) (2) and (3) of this section that must be paid by FmHA, the County Supervisor may pay them as a petty purchase or as the bill of a creditor of FmHA in accordance with FmHA Instructions 2024-E and 2075-A, copies of which are available in any FmHA office.

(2) Satisfactions. The borrower must pay fees for filing or recording satisfactions or termination statements unless a State supplement based on State law requires FmHA to pay them.

(3) Notary fees. FmHA will pay fees for notary service for executing releases, subordinations, and related documents for and on behalf of FmHA if the service cannot be obtained without cost.

(b) *Insurance premiums.* County Supervisors are authorized to approve bills or invoices for payment of insurance premiums on chattel security for FmHA loans when:

(1) A borrower cannot pay the premiums from the borrower's own resources at the time due;

(2) It is not practical to process a loan for that purpose;

(3) It is necessary to protect FmHA's interests; and

(4) The amount advanced can be charged to the borrower under the provisions of the security instrument.

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

(a) *Purposes.* FmHA chattel liens securing Operating (OL), Economic Emergency (EE) and Emergency (EM) loans may be subordinated to a lien of another creditor to permit that creditor to lend for any authorized OL, EE, or EM loan (Subtitle B) purpose, including capital purchases, provided:

(1) The borrower needs the loan to continue farming operations; and

(2) The loan will help the borrower to accomplish the objectives of the FmHA loans; and

(3) FmHA's financial interest will not be adversely affected.

(b) *Limitations.* (1) When a non-FmHA loan is made to pay expenses directly related to particular crops or livestock enterprises, FmHA lien priority should be subordinated to the non-FmHA creditor's lien only so far as crops, livestock increases, feeder livestock or other normal farm income security is concerned. If the non-FmHA lender will not make a loan unless FmHA agrees to subordinate more of its priority, FmHA may subordinate any lien it holds on basic chattel security. FmHA should not give up any more of its priority to basic chattel security than is absolutely necessary to provide the non-FmHA lender with the security it requires.

(2) When an obligation secured by a lien prior to that of FmHA is about to mature or has matured and the prior lienholder desires to extend or renew the obligation, or the obligation can be refinanced, the FmHA lien may be subordinated. However, the relative lien position of FmHA must be maintained.

(3) The subordination will be limited to a specific amount.

(4) A subordination in favor of only one creditor will be outstanding at any one time in connection with the same security. A subordination also may be executed to enable a borrower to obtain necessary crop insurance if the creditor to whom a subordination has been given on that crop consents in writing to payment of the insurance premiums from the crop or insurance proceeds.

(5) When a subordination is executed to enable the borrower to obtain insurance on crops under lien to FmHA, the borrower will assign the insurance proceeds to FmHA or name FmHA in the loss-payable clause of the policy.

(6) Waivers of FmHA lien priority, instead of subordinations, may be executed in favor of a creditor who has made or will make advances to produce, harvest, process, or market crops under written contract to that creditor. Such waivers are limited to the purposes for which a subordination may be made under this Subpart.

(c) *Approval.* Loan approval officials may approve subordinations and waivers of FmHA OL lien priority if the amount of the proposed subordination or waiver, plus the principal balance of existing subordinations or waivers, is not more than their OL approval authority stated in tables which are available from any FmHA office. Loan approval officials may approve subordinations and waivers of FmHA EM and EE loans lien priority if the amount of the subordination or waiver plus the unpaid principal balance of existing EM and EE loans and subordinations does not exceed their EM or EE loan approval authority stated in tables which are available from any FmHA Office. When the lien priority for more than one type of loan is subordinated or waived, the total amount of the approval official's authority will be limited to the loan with the lowest approval authority for that official. However, the State Director may approve subordinations or waivers regardless of the amount. State Directors may redelegate their authority for approving subordinations to qualified State Office employees.

(d) *Forms.* (1) Subordinations or lien waivers authorized in this Subpart will be made on Form FmHA 460-2, "Subordination by the Government," or on other forms approved by the State Director with OGC's advice. If Form FmHA 460-2 does not conform to a State's recording requirements, a State supplement may be used, if approved by OGC, to modify the form.

(2) *Form FmHA 431-2* or other similar plan of operation acceptable to FmHA will show the subordination or lien waiver and repayment.

(e) *Loans under CCC program.* See Exhibits B and C of this Subpart.

(1) When the ASCS County Office makes CCC loans to the borrower, FmHA will not execute a form of subordination or lien waiver.

(2) When the full value of a CCC loan on cotton is to be advanced to the borrower by a bank, ginner, or warehouseman whom the County Supervisor considers financially responsible, and when a check or draft

issued by the bank, ginner, or warehouseman is made payable to FmHA, or jointly to FmHA and the borrower, and is delivered to the County Supervisor, the County Supervisor may then execute the lienholder's waiver on Form CCC Cotton A even though item 2 of that form shows that the CCC loan will be distributed to such a bank, ginner, or warehouseman. Loan approval officials may approve waivers of crop liens in accordance with subsection (c) of this section.

(3) If the commodity covered by the CCC loan is released by CCC or redeemed by the borrower, the FmHA lien will be restored to the priority it held before the CCC loan was made.

(4) When the borrower wishes to rotate or exchange a new crop for an old crop that is stored under the CCC Grain Reserve Program, the County Supervisor and the ASCS official will proceed as set out in Exhibit C of this subpart.

§§ 1962.31–1962.33 [Reserved]

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1). The transferor (borrower) must be sent Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," as soon as the borrower contacts the County Supervisor inquiring about a transfer.

(a) *Transfer to eligibles.* Transfers of chattel security and EO property to a transferee who is eligible for the kind of loan being assumed or who will become eligible after the transfer may be approved, provided:

(1) The transferee assumes the total outstanding balance of the FmHA debts or that portion of the outstanding balance equal to the present market value of the chattel security or EO property, less any prior liens, if the property is worth less than the entire debt.

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. Form FmHA 460–9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 460–5, "Assumption Agreement (New Terms)." The new repayment period may not exceed that for a new loan of the same type. If Form FmHA 460–5 is used, the current interest rate for such loans will be charged to all applicants. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be placed on new rates and terms.

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under subsection (b) of this section. However, when one or more of the borrowers or jointly obligated partners withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers or partners may be made as an eligible transferee.

(b) *Transfer to ineligibles.* Transfer of the chattel security and EO property to a transferee who is not eligible for the kind of loan being assumed may be approved, provided:

(1) It is in FmHA's financial interest to approve the transfer of security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assumes the total outstanding balance of the FmHA debt, or an amount equal to the present market value of the security or EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 460–5. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed. Interest rates to the transferee will be as follows:

(i) For OL, ~~EE,~~ SL, and EM loans, the current interest rate in effect for regular OL loans at the time of approval of the transfer plus one percent.

(ii) For EO loans, 6 percent.

(4) The transferee can repay the FmHA debt in accordance with the assumption agreement and can legally enter into the contract.

(c) *Effect of signature.* In all cases the purpose and effect of signing an assumption agreement or other evidence of indebtedness is to engage separate and individual personal liability, regardless of any State law to the contrary.

(d) *Release of transferor from liability.* The borrower and any co-signer may be released from personal liability to FmHA when all the chattel security is transferred to an eligible or ineligible applicant and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. The servicing official is authorized to approve releases from liability except when the FmHA debt secured by chattels less their market value exceeds $25,000, the Administrator must approve the release from liability. When there will be no release from liability, the transferor and co-signer of a farmer program loan must be sent a letter similar to Exhibit F of Subpart A of 1955 of this chapter (available in any FmHA office).

(e) *County Committee actions.* (1) Transfer to eligible applicant. The County Committee will certify the transferee's eligibility for the types of loans to be assumed on Form FmHA 440–2, "County Committee Certification or Recommendation."

(2) Transfer to ineligible applicant. The County Committee will execute a memorandum statement on Form FmHA 440–2 as follows: "In our opinion, the transferee, (name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan."

(3) Release from liability. If the total outstanding debt is not assumed, the County Committee will execute a memorandum statement on Form FmHA 440–2 when they recommend the transferor be released from personal liability, which will read as follows: "(*Name of transferor and any co-signer*) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the convenants incident to the loan to the best of their ability. Therefore, we recommend that the transferror and any co-signer be released from personal liability on the transferees' assumption of a portion of

the indebtedness at least equal to the present market value of the security." If the total outstanding debt is assumed, the statement is not required.

(f) *Transfer and assumption docket.* The County Supervisor will assemble the following statements and forms for transfer and assumption:

(1) A statement of the current amount of the indebtedness.

(2) A description of the security or EO property to be transferred and a statement about its value.

(3) Form FmHA 410-1, "Application for FmHA Services."

(4) Form FmHA 440-2 for an eligible transferee, with the memorandum statement of the County Committee if the transferor is to be released from liability.

(5) County Committee memorandum statement for ineligible transferee with the additional memorandum statement if the transferor is to be released from liability.

(6) Statement of justification for the transfer, including a plan of repayment, if not otherwise shown in the docket.

(7) Transferee's plan of operation shown on Form FmHA 431-2 or other similar plan of operation acceptable to FmHA, or Form FmHA 431-3, or Form FmHA 431-4.

(8) Form FmHA 460-5 or Form FmHA 460-9, as appropriate.

(9) Form FmHA 465-8, "Release from Personal Liability," when appropriate.

(10) Form FmHA 1940-1, "Request for Obligation of Funds."

(11) Form FmHA 465-5, "Transfer of Real Estate Security," will be used to transfer real estate security.

(12) Form FmHA 1960-6, "Assumption Agreement (Information)," or Form FmHA 1965-22, "Information on Assumption on New Terms or Other Change of Terms," as appropriate, and Form FmHA 1965-23, "Supplemental Information on Assumption and/or Change of Terms."

(13) Form FmHA 1924-14. [Added]

(g) *Processing assumption agreements.* Additional security instruments will be obtained in accordance with advice from OGC.

(1) On receipt of Form FmHA 1960-6 or Form FmHA 1965-22, and Form FmHA 1965-23 the Finance Office will establish an account in the name of the assuming transferee and will notify the County Supervisor.

(2) Form FmHA 1905-1, "Management System Card—Individual," will be prepared for the transferee, and the loan record cards of the transferor will be attached.

(3) If a collection is received from the transferee after the assumption agreement is approved but before Finance Office notification to the County Office, Form FmHA 451-2, "Schedule of Remittances," will be prepared as follows:

(i) During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account, and Form FmHA 451-26, "Transaction Record," or Form FmHA 451-31, "Borrower Transaction Record," will be forwarded to the County Office. This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. On receiving a payment on the account not included in the latest transaction record or monthly payment account status report, the County Supervisor should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

(ii) When the borrower has made a direct payment to the Finance Office and there is no record of it in the County Office, the account will be assumed based on the latest record in the County Office. The application of the direct payment will be reversed from the account, and the assumption agreement will be processed in the Finance Office. The Director, Finance Office, will contact the County Supervisor to determine how to dispose of the proceeds from the direct payment.

(iii) For payments received on the date of transfer, Form FmHA 451-2 will be prepared to show "Transfer in process for account owed by (borrower's name and case number) to be transferred to (Name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451-2 and the amount paid.

(iv) When a payment is due on the assumption agreement shortly after the transfer is completed, it should be collected if possible, at the time of transfer and remitted in the transferee's name.

(h) *Approval.* Loan approval officials are authorized to approve transfer and assumption of FmHA accounts to eligible or ineligible transferees and releases from liability when the debts are within their respective loan approval authorities stated in tables which are available from any FmHA Office (FmHA Instruction 1901-A).

(1) Loan approval officials may also approve transfers and assumptions of EO loans ane releases from liability. State Directors may also approve transfers to and assumptions by ineligible transferees and releases from liability regardless of the amount of the outstanding EM loan debt.

(2) The Administrator will review for approval proposed transfers to and assumptions by eligible transferees that exceed the approval authorities of State Directors for EM loans.

§§ 1962.35-1962.39 [Reserved]

§ 1962.40 Liquidation.

(a) *Voluntary liquidation.*—(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can only be accomplished by:

(i) Selling the security under § 1962.41 of this subpart,

(ii) Transferring the security under § 1962.34 of this subpart,

(iii) Conveying the security to FmHA under Subpart A of Part 1955 of this chapter, or

(iv) Refinancing the debt with another lender.

The provisions of these regulations will be explained to the borrower.

(2) *Lien search.* The County Supervisor will obtain a current lien search report to determine the effect that liens of other parties will have on liquidation, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sales proceeds. Normally, lien searches should be obtained from the same source as is used when making a loan. If obtaining the searches from third party sources causes undue delay which interferes with orderly liquidation, searches may be made by the County Supervisor. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, FmHA will pay the cost and charge it to the borrower's account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with a State supplement.

(b) *Involuntary liquidation.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of the subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1962.2(a) of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section. In farmer program loan caes, borrowers must receive Forms FmHA 1924-14, "Notice—Farmers Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," 1924-25, "Notice of Intent to Take Adverse Action," and 1924-26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* When liquidation is begun, it is FmHA policy to liquidate all security and EO property except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for minimum family living needs will not exceed $600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness.

(2) *Lien search.* The County Supervisor will follow the directions set out in paragraph (a)(2) of this section.

(3) *Agreement with borrower.* After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account immediately by (i) selling the security in accordance with § 1962.41 of this subpart, (ii) transferring the security in accordance with § 1962.34 of this subpart, (iii) conveying the security to FmHA under Subpart A of Part 1955 of this chapter, or (iv) refinancing the debt with another lender, the County Supervisor may allow the borrower 60 days to accomplish such action. Farmer program loan borrowers who have been sent Form FmHA 1924-25 will be given 120 days if Form FmHA 1924-26 is returned indicating that the borrower is willing to sell, transfer or voluntarily convey the security or refinance the debt.

(4) *No agreement with borrower.* After the borrower is told that FmHA wants the account liquidated, if the borrower is not willing to voluntarily liquidate, the borrower's account will be accelerated (see paragraphs (b)(4) (i) and (ii) of this paragraph). The County Supervisor will then attempt to repossess the security in accordance with § 1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with § 1962.49 of this subpart. Unmatured installments will be accelerated as follows:

(i) The District Director will accelerate all unmatured installments by using Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter except in cases referred to OGC for civil action, if the notice has previously been given.

(ii) Exhibit D of Exhibit E of Subpart A of Part 1955 of this chapter will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only.

(c) *Multiple loans and loans secured by both real estate and chattels.* Follow the provisions of § 1872.17(b) of Part 1872 of this chapter for liquidating these loans.

(d) *Assignment of insured loans.* When liquidation of an insured loan is approved, the State Director will be asked by the official who approved the liquidation to immediately obtain an assignment of the loan to FmHA if the promissory note is not held in the County Office. Pending the assignment, preliminary steps to effect liquidation should be taken, but civil or other court action will not be started and claims will not be filed in bankruptcy or similar proceedings or in probate or administration proceedings with respect to the insured loan claim, unless essential to protect FmHA's interests and OGC recommends such action. However, other steps need not be held up pending assignment. If any problems are encountered in obtaining the assignment, OGC may be contacted for advice.

(e) *Protective advances.* (1) After Forms FmHA 1924-25 and 1925-26 have been sent and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

(i) Delinquent taxes or assessments that constitute prior liens which would be paid ahead of FmHA under § 1962.44(a) of this subpart.

(ii) Premiums on insurance essential to protect FmHA's interest, and

(iii) Other costs including transportation necessary to protect or preserve the security.

(2) However, such advances may not be made unless the amount advanced becomes a part of the debt secured by FmHA's lien, or is for expenses of administration of estates or for litigation. If a case is in the hands of the U.S. Attorney, such advances may not be made without the U.S. Attorney's concurrence. Moreover, such advances may not be made in any case to pay expenses incurred by a U.S. Marshal or other similar official such as a local sheriff. However, if the official seizes the property and delivers it to FmHA for sale by FmHA, costs incurred by FmHA after delivery to FmHA will be paid.

(3) The County Supervisor will submit a report on the need for such advances to the State Director, including:

(i) Borrower's County Office case file;

(ii) Current lien search report;

(iii) Statement of the type and value of the property and of the circumstances which may result in the loss or deterioration of such property; and

(iv) A recommendation as to whether or not the advance should be approved.

(4) Costs incurred by FmHA in protecting its interest in security or EO property may be paid by means of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," in accordance with FmHA Instruction 2024-P (available in any FmHA office), and may be charged to the borrower's loan account, or paid from proceeds of the sale of security or EO property.

§ 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent Forms FmHA 1924-25 and 1924-26 will be sent Form FmHA 1924-14 before any sale occurs.

(a) *Public sale.* A borrower may voluntarily liquidate chattels by selling the property at auction in the borrower's own name. Form FmHA 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)", will be executed by the borrower, all lienholders, and the clerk of the sale or other person who will receive the sale proceeds before execution by the County Supervisor. When EO property is involved delete from the Form the reference to the FmHA lien wherever it appears on the forms. No FmHA official is authorized to bid at such sales. The County Supervisor will arrange to promptly receive the proceeds of the sale due FmHA for application on the borrower's indebtedness.

(b) *Private sale.* The borrower may sell chattel security or EO property at a private sale if:

(1)(i) The borrower has ready purchasers and can sell *all* of the property for its present market value; or

(ii) The property is perishable; or

(iii) The property is of a type customarily sold on a recognized market; or

(iv) The property consists of items of small value or a limited number of items which do not justify public sale.

(2) Form FmHA 1962-1 may be used to approve liquidation of such security. The County Supervisor will document in the running case record the reasons that a public sale was not justified.

(3) Form FmHA 455-3 is completed before the sale.

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to FmHA by signing Form FmHA 455-4, "Agreement for Voluntary Liquidation of Chattel Security." This form authorizes FmHA to sell the security at either public or private sale. If FmHA hires a caretaker, services should be obtained by use of Form FmHA 120-10; "Solicitation, Quotation, Purchase Order, Inspection, and Invoice" in accordance with Subpart D of Part 1955 of this Chapter.

(d) *Record of Sale.* The sale will be recorded on Form FmHA 1962-1.

(e) *Unpaid FmHA Debt.* If the sale results in less than full payment of the FmHA debt, the account will be considered for debt settlement.

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security a borrower and all cosigners on the note must receive Forms FmHA 1924-14, 1924-25 and 1924-26 and any appeal must be concluded. The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lineholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

(1) *Conditions.* The County Supervisor will take possession under any of the following conditions:

(i) When Form FmHA 455-4 has been executed. For EO property this form will be revised by placing a period after "interest" in the first sentence beginning "The Debtor" and deleting the remainder of that clause; deleting the words "collateral covered by the security instruments" in the second part of the sentence and inserting instead "property covered by the debtor's loan agreement which is referred to as the collateral."

(ii) When the borrower has abandoned the property.

(iii) When peaceable possession can be obtained, but the borrower has not executed Form FmHA 455-4.

(iv) When the property is delivered to FmHA as a result of court action.

(v) When Form FmHA 455-5, "Agreement of Secured Parties to Sale of Security Property," is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property their liens may be paid if their notes and liens are assigned to FmHA on forms prepared or approved by OGC. When prior liens are paid, the payment will be made by processing Standard Form 1034 in accordance with FmHA Instruction 2024-P (available in any FmHA office) and charged to the borrower's account.

(vi) When arrangements cannot be made with the borrower or a member of the borrower's family to sell EO property in accordance with the loan agreement.

(2) *Recording.* A list, dated and signed by the County Supervisor, of all security or EO property repossessed except for those items on Form FmHA 455-4, Form FmHA 455-6, or Form FmHA 455-7, "Agreement for Cultivating, Harvesting, and Delivering Crops," will be maintained in the borrower's case file. Whenever the County Supervisor is transferred to another position or leaves FmHA or there is a change in jurisdiction, the District Director will give the succeeding County Supervisor in writing, the names of such borrowers and a list of the property repossessed in the custody of the County Supervisor and caretakers, its location, and the names and addresses of the caretakers.

(b) *Care.* The County Supervisor will arrange for the custody and care of repossessed property as follows:

(1) *Livestock.* Care and feeding of livestock will be obtained by contract pursuant to FmHA Instruction 1955-D (available in any FmHA office). The value of animal products (such as milk) may constitute all or part of the contractor's quotation, and if this is desired, such a statement should be included in the solicitation. Possession of the livestock will be turned over to the contractor only after the contract is awarded using Form FmHA 120-10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice." If a contractor's services are needed for a longer period than is authorized in paragraph (c)(4)(i) of this section, the State Director may authorize the County Supervisor to continue obtaining the necessary services for the time needed.

(2) *Machinery, equipment, tools, harvested crops, and other chattels.* Property will be stored and cared for pending sale. Storage and necessary services may be obtained by contract using Form FmHA 120-10. Use of property by the contractor is not authorized.

(3) *Crops.* Form FmHA 120-10 will be used for obtaining services for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place. Where a loanlord is involved, written consent of the landlord should be obtained. If landlord consent cannot be obtained, where applicable, the circumstances should be reported to the State Director for advice.

(c) *Sale.* Repossessed property may be sold by FmHA at public or private sale for cash under Form FmHA 455-4, Form FmHA 441-19, the power of sale in security agreements under the UCC or in crop and chattel mortgages and similar instruments if authorized by a State supplement. Also, repossessed property may be sold at private sale when the borrower executes Form FmHA 455-11, "Bill of Sale 'B' (Sale by Private Party)."

(1) *Tests and inspections of livestock.* If required by State law as a condition of sale, livestock will be tested or inspected before sale. A State supplement will be issued for those States.

(2) *Public sales.* Such sales will be made to the highest bidder. They may be held on the borrower's farm or other premises, at public sale barns, pavilions, or at other advantageous sales locations. No FmHA employee will bid on or acquire property at public sales except on behalf of FmHA in accordance with § 1955.20 of Subpart A of Part 1955 of this Chapter. The County Supervisor will attend all public sales of repossessed property.

(3) *Private sales.* FmHA will sell perishable property such as fresh fruits and vegetables for the best price obtainable. FmHA will sell staple crops such as when, rye, oats, corn, cotton, and tobacco for a price in line with current market quotations for products of similar grade, type, or other recognized classification. Chattel property sold under Form FmHA 455-4, other than perishable property and staple crops, will not be sold for less than the minimum price in the agreement. FmHA will sell other property, including that sold when the borrower executes Form FmHA 455-11, for its present market value.

(4) *Selling period.* Repossessed property will be sold as soon as possible. However, when notice is

required by paragraph (c)(5) of this section, the sale will not be held until the notice period has expired.

(i) The sale will be made within 60 days, unless a shorter period is indicated by a State supplement because of State law. Crops will be sold when the maximum return can be realized but not later than 60 days after harvesting, or the normal marketing time for such crops. The State Director may extend the sale time within State law limits.

(ii) These requirements do not apply to irrigation or other equipment and fixtures which, together with real estate, serve as security for FmHA real state loans and will be sold or transferred with the real estate. However, a State Supplement will be issued for any State having a time limit within which such items must be sold along with or as a part of the real estate.

(5) *Notice*. (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA 455–8, "Notice of Sale," may be used for public or private sales.

(A) Notice of the borrower or lienholder is not required when the property is sold under Form FmHA 455–4 because the parties are placed on notice when they execute the form. When the sale involves only collateral which is perishable, will decline quickly in value, or is a type customarily sold on a recognized market, notice is not required but may be given if time permits to maintain good public relations.

(B) Notice only to lienholder is required when repossessed property is sold at private sale and the borrower executes Form FmHA 455–11.

(C) If the property is to be sold under a chattel mortgage, the manner of notice will be set forth in a State supplement or on an individual case basis.

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form FmHA 455–8 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds.

(6) *Advertising*. (i) Private sales and sales at established public auctions will be advertised by FmHA only if required by a State supplement based on State law.

(ii) Other public sales, whether under power of sale in the lien instrument or under Form FmHA 455–4, will be widely publicized to assure large attendance and a fair sale by one or more of the following methods customarily used in the area.

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA 455–8, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

(B) Advertising in newspapers or spot advertisting on local radio or TV stations may be used depending on the amount of property to be sold and the cost in relation to the value of the property, the customs in the area, and State law requirements. When newspaper advertising is required, a State supplement will indicate the types of newspapers to be used, the number and times of insertions of the advertisement, and the form of notice of sale. All advertising must contain non-discrimination clauses.

(7) *Payment of costs and prior lienholders*. If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44(b) of this subpart or to pay prior lienholders, such costs or prior liens will be paid by use of Form FmHA 120–10, Standard Form 1034, or Standard Form 1143, "Advertising Order," and Standard Form 1143a, "Memorandum Copy," for newspaper or publisher's invoice for newspaper advertising and Form FmHA 2024–1, "Miscellaneous Payment System," in accordance with FmHA Instructions 2024–F and 2024–P (available in any FmHA office). The amount of the voucher will be charged to the borrower's account, except as limited by State law in a State Supplement. No costs in the repossession and sale of security should be incurred unless they can be charged to the borrower's account, and in no event will the Government pay them. However, if costs are legally chargeable to the borrower, they may be paid as provided in this subpart, and charged to an account set up for the officials or other persons found responsible for them.

(8) *Bill of sale or transfer of title*. If a purchaser requests a written conveyance of repossessed property sold by FmHA at public or private sale, the County Supervisior will execute and deliver to the purchaser Form FmHA 455–12, "Bill of Sale 'C' (Sale Through Government as Liquidating Agent)," or other necessary instruments to convey all the rights, title, and interests of the borrower and FmHA. A State supplement will be issued as necessary for conveying title to motor vehicles and boats.

(9) *Risk of injury*. If a farmer program loan borrower has abandoned security *and* the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section and then send the borrower and all cosigners on the note Forms FmHA 1924–14, 1924–25 and 1924–26. The security will be cared for as explained in paragraph (b) of this section until any appeal is concluded or the borrower has waived or forfeited the opportunity to appeal. When the appeal is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of the appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, and this determination will be made by the County Supervisor. However, an independent third party (not an FmHA employee) must determine that livestock are in danger of substantial damage. Protective advances may be made in accordance with § 1962.40(e) of this subpart.

§ 1962.43 Liquidation of chattel security or EO property by other parties.

(a) *Sale by prior lienholders and other parties*. See § 1955.20 of Subpart A of Part 1955 of this chapter for the County Supervisor's authority to bid at such sales.

(b) *Sale by junior lienholders*. On learning through formal notice or otherwise that a junior lienholder has begun foreclosure, the County Supervisor will inform the foreclosing junior lienholder in writing as to the property on which FmHA holds a prior lien; and that if the junior lienholder's foreclosure sale is held, the County Supervisor will announce at the sale that FmHA holds a prior lien on each item of such property as security for an indebtedness of $——— (total principal and interest), and that any such property sold will continue to be subject to FmHA's prior lien.

(c) *Retention by other lienholders without sale.* If another lienholder notifies FmHA that it has taken possession of the security after default and proposes to keep it in satisfaction of its secured claim, the County Supervisor should promptly reply in writing that FmHA objects and insists that the property be sold in accordance with law. The County Supervisor will only write the lienholder when FmHA's estimated recovery will be substantially greater than the amount of the claim, prior liens and sale expenses. After such notice, the case will be referred to the State Director for advice.

§ 1962.44 Distribution of liquidation sale proceeds.

This section applies to proceeds of nonjudicial liquidation sales conducted under the power of sale in lien instruments or under Form FmHA 455–4, Form FmHA 455–3, or Form FmHA 462–2.

(a) *Lien priorities.* (1) Federal liens. For Federal income, social security, other Federal tax liens, or liens of other Federal agencies, OGC's advice will be obtained as to lien priorities.

(2) State and local tax liens. A State supplement, if considered necessary by the State Director and OGC, will list priorities of these liens, or may provide for referral of these cases to the State Office.

(3) Chattel mortgages and other liens of private parties. A State Supplement, if considered necessary by the State Director and OGC, will list priorities of chattel mortgages, landlord's liens, mechanics and materialmen liens, and other liens of private parties.

(4) Security interest under UCC. Liens on the same collateral that are perfected by filing a financing statement under the UCC and that are still effective as constructive notice, unless otherwise provided by a State supplement, will be paid in the order of their perfection. Exceptions to this rule are listed below. A State supplement will be issued whenever necessary to explain any States deviations from these listed exceptions.

(i) A purchase money security interest in personal property will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the collateral or within 10 days thereafter. However:

(A) *Motor vehicles.* For motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession of the collateral or within 10 days thereafter. In some States, filing a financing statement to perfect a security interest is not required. A State supplement will be issued as necessary.

(B) *Farm equipment.* A purchase money security interest in farm equipment, other than fixtures or motor vehicles required to be licensed, costing $2,500 or less, will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not taken or filed.

(C) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest provided a security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property. Also, before the purchaser receives possession, the purchase money creditor will notify the earlier perfected security party, in writing, that he or she had, or expects to acquire, a purchase money security interest in inventory described by item or type.

(ii) A security interest taken in goods before they become fixtures has priority over real estate interest holders. A security interest taken in goods after they become fixtures, is valid against all persons subsequently acquiring an interest in the real estate. It is not valid, however, against persons who had an interest in the real estate when the goods became fixtures, unless they execute a consent disclaimer or subordination agreement.

(iii) When new value is given, a security interest taken in and to finance crops not more than 3 months before they are planted or otherwise become growing crops, has priority over an earlier perfected security interest for obligations that were due more than 6 months before the crops became growing crops.I11(b) *Order of Payment.* Sales proceeds will be distributed in the following order of priority.

(1) To pay expenses of sale including advertising, lien searches, tests and inspection of livestock, and transportation, custody, care, storage, harvesting, marketing, and other expenses chargeable to the borrower, including reimbursement of amounts already paid by FmHA and charged to the borrower's account. Bills can be paid, after liquidation has been approved, for essential repairs and parts for machinery and equipment to place it in reasonable condition for sale, provided written agreements from any holders of liens which are prior to those of FmHA state that such bills may be paid from the sales proceeds ahead of their liens.

(i) However, any such expenses incurred by the U.S. Marshal or other similar official such as a local sheriff may not be paid from sale proceeds turned over to FmHA.

(ii) On the other hand, if the U.S. Marshal or other similar official such as a local sheriff has taken possession of the property and delivered it to FmHA for sale, such costs incurred by FmHA after delivery of the property to it may be paid from the proceeds of the sale.

(2) To pay liens which are prior to FmHA liens provided that:

(i) State and local tax liens on security or EO property which are prior to the liens of FmHA will be paid only when demand is made by tax collecting officials before distributing the sale proceeds. The sale proceeds will not be used to pay real estate, income, or other taxes which are not a lien against the security, or to pay substantial amounts of personal property taxes on nonsecurity personal property.

(ii) If action is threatened or taken by the sheriff or other official to collect taxes not authorized in suparagraph (b)(2)(i) of this section to be paid out of the security or the sale proceeds, the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible, disinterested party an amount equal to the tax claim, pending determination of priority rights. When the sale is postponed, or an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to OGC.

(iii) If FmHA subordinations have been approved, their intent will be recognized in the use of sale proceeds even though the creditor in whose favor the FmHA lien was subordinated did not obtain a lien. If there are other third party liens on the property, however, the lien-holders must agree to the use of the sale proceeds to pay such creditor first.

(3) To pay rent for the current crop year from the sale proceeds of other than basic security or EO property. However, there must be no liens junior to FmHA's other than the landlord's

lien, if any, and the borrower must consent in writing to the payment.

(4) To pay debts owed FmHA which are secured by liens on the property sold.

(5) To pay liens junior to those of FmHA in accordance with their priorities on the property sold, including any landlord's liens for rent unless such liens already have been paid. Junior liens will not be paid unless, on request, the lienholder gives proof of the existence and the amount of his or her lien.

(6) To pay on any EO unsecured debt.

(7) To pay rent for the current crop year if the borrower consents in writing to payment and if such rent has not already been paid as provided in subparagraphs (b) (2), (3), or (5) of this section.

(8) To pay on any other FmHA debts, either unsecured or secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part or all of the remainder of such sale proceeds by the borrower for other purposes, provided the other FmHA debts are adequately secured, or the borrower arranges to pay the other debts from income or other sources and these payments can be depended upon.

(9) To pay the remainder to the borrower.

(c) *Receipts.* Receipts are required for all amounts paid from the sale proceeds and are kept in the borrower's case file. Form FmHA 451-2 will be prepared only for the total amount remitted to FmHA for credit to the borrower's indebtedness.

§ 1962.45 Reporting sales.

Form FmHA 1955-3, "Advice of Property Acquired," will be prepared and distributed according to the FMI when property is acquired by FmHA.

§ 1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to FmHA, the County Supervisor will prepare Form FmHA 455-17, "Report on Deceased Borrower," to determine whether any special servicing action is necessary unless the County Supervisor recommends settlement of the indebtedness under Part 1864 of this Chapter (FmHA Instruction 456.1). If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, administrator, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

(a) *Reporting.* The borrower's case files including Form FmHA 455-17 will be forwarded promptly to the State Director for use in deciding the action to take if any of the following conditions exist (When it is necessary to send an incomplete Form FmHA 455-17, any additional information which may affect the State Director's decision will be sent as soon as available on a supplemental Form FmHA 455-17 or in a memorandum.):

(1) Probate or other administration proceedings have been started or are contemplated.

(2) The debts owed to FmHA are inadequately secured and the state has other assets from which collection could be made.

(3) FmHA's security has a value in excess of the indebtedness it secures and the deceased obligor owes other debts to FmHA which are unsecured or inadequately secured.

(4) The County Supervisor recommends continuation with a survivor who is not liable for the indebtedness or recommends transfer to, and assumption by, another party.

(5) The County Supervisor recommends, but does not have authority to approve liquidation.

(6) The County Supervisor wants advice on servicing the case.

(b) *Probate or administration proceedings.* Generally, probate or administration proceedings are started by relatives or heirs of the deceased or by other creditors. Ordinarily, FmHA will not start these proceedings because of the problems of designating an administrator or other similar official, posting bond, and paying costs. If probate or administration proceedings are started by other parties or at FmHA's request, and any security is to be liquidated by FmHA instead of by the administrator or executor or other similar official, it will be liquidated in accordance with the advice of OGC. The State Director may request OGC to recommend that the U.S. Attorney bring probate or administration proceedings when it appears that:

(1) Such proceedings will not be started by other parties;

(2) FmHA's interests could best be protected by filing a proof of claim in such proceedings, and

(3) Public administrators or other similar officials or private parties, including banks and trust companies, are eligible to, and will serve as administrator or other similar official and will provide the required bond.

(c) *Filing proof of claim.* When a proof of claim is to be filed, it will be prepared on a form approved by OGC, executed by the State Director, and transmitted to OGC. It will be filed by OGC or by an FmHA official as directed by OGC or it will be referred by OGC to the U.S. Attorney for filing if representation of FmHA by counsel may be required. If a judgment claim is involved, the notification to the U.S. Attorney will be the same as for judgment claims in bankruptcy. If an insured loan is involved, the proof of claim will not be prepared until the note has been assigned to the Government. A proof of claim will be filed when probate or administration proceedings are started, unless:

(1) After considering liens and priority rights of FmHA and other parties, costs of administration, and charges against the estate, FmHA cannot reach the assets in the estate except for FmHA's own security and FmHA will liquidate the security by foreclosure or otherwise if necessary to collect its claim, or

(2) Continuation with an individual or transfer to and assumption by another party is approved, and either the debt owed to FmHA is fully secured, or the amount of the debt in excess of the value of the security which could be collected by filing a claim is obtained in cash or additional security, or

(3) The debt owed to FmHA by the estate is settled under Part 1864 of this Chapter (FmHA Instruction 456.1) well ahead of the deadline for filing proof of claim.

(d) *Priority of claims.* (1) Each secured claim will take its relative lien priority to the extent of the value of the property serving as security for it. These claims include those secured by mortgages, deeds of trust, landlord's contractual liens, and other contractual liens or security instruments executed by the borrower or real or personal property. However, tax, judgment, attachment, garnishment, laborer's, mechanic's, materialmen's, landlord's statutory liens, and other noncontractual lien claims may or may not be secured claims. Therefore, if any noncontractual claims are allowed as secured claims and the FmHA claim is not paid in full, the advice of OGC will be obtained as to whether they constitute secured claims and as to their relative priorities.

(2) Unsecured claims will be handled as follows:

(i) The remaining assets of the estate, including any value of security for more than the amount of the secured claims against it, are to be applied first to payment of administration costs and charges against the estate and second to unsecured debts of the deceased.

(ii) If the total of the remaining assets in the estate being administered is not enough to pay all administration costs, charges against the estate, and unsecured debts of the deceased, the

Government's unsecured claims against the remaining assets will have priority over all other unsecured claims, except the costs of administration and charges against the estate. Under such circumstances unsecured claims are payable in the following order of priority:

(A) Costs of administration and charges against the estate unless under State law they are payable after the Government's unsecured claims. Such costs and charges include costs of administration of the estate, allowable funeral expenses, allowances of minor children and surviving spouse, and dower and curtesy rights.

(B) The Government's unsecured claims.

(3) A State supplement will be issued as needed taking into consideration 31 U.S.C. § 3713 lien waivers and subordinations, and notice and other statutory provisions which affect lien priorities.

(e) *Withdrawal of claim.* It may not be necessary to withdraw a claim when it is paid in full by someone other than the estate or when compromised. However, when it is necessary to permit closing of an estate, compromise of a claim, or for other justifiable reasons, the State Director will recommend to OGC that the claim be withdrawn on receipt of cash or security, or both, of a value at least equal to the amount that could be recovered under the claim against the estate. When FmHA keeps existing security, arrangements must be made to assure that withdrawal of the claim will not affect FmHA's rights under the existing notes or security instruments with respect to the retained security. In some cases, with OGC's advice, the claim may be properly handled without filing a formal petition for withdrawal of the claim. However, if the claim has been referred to the U.S. Attorney, or if a formal withdrawal of the claim is necessary, the matter will be referred by OGC to the U.S. Attorney.

(f) *Liquidation of security.* When probate or administration proceedings have not been started and continuation with a survivor or transfer and assumption by another party will not be approved, chattel security and real estate security will be liquidated promptly in accordance with this Subpart and Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1), respectively. If the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA, and other assets are available in the estate or in the hands of heirs from which to collect, the State Director will request OGC to effect collection.

(g) *Continuation of secured debt and transfer or security.* When a surviving member of a deceased borrower's family or other person is interested in continuing the loan and taking over the security for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of the borrower's death, continuation may be approved subject to the following:

(1) Any individual who is liable for the indebtedness of the deceased borrower may continue with the loan provided that individual can comply with the obligations of the notes or other evidence of debt and chattel or real estate security instruments and so long as liquidation is not necessary to protect the interest of FmHA. When an individual who is liable for the indebtedness is to continue with the account, Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office to change the account to that individual's name. A new case number will be assigned or, if the continuing individual already has a case number, that number will be used regardless of whether that individual assumed all or a portion of the amount of the debt owed by the estate of the deceased.

(2) When a surviving member of a deceased borrower's family, a relative or other individual who is not liable for the indebtedness desires to continue with the farming or other operations and the loan, the State Director may approve the transfer of chattel or real estate security or both to the individual and the assumption of the debt secured by such property without regard to whether the transferee is eligible for the type of loan being assumed, subject to the following conditions:

(i) The transferee will continue the farming or other operations for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of death.

(ii) The amount to be assumed and the repayment rates and terms will be the same as provided in § 1962.34(a) of this Subpart.

(iii) The State Director determines that the continuation will not adversely affect repayment of the loan.

(3) In determining whether to continue with individuals, whether they are already liable or assume the indebtedness, all pertinent factors will be considered including whether:

(i) Probate or administration proceedings have been or will be started and, with OGC's advice, whether the filing of a claim on the debt owed to FmHA in such proceedings is necessary to protect FmHA's interests.

(ii) Arrangements can be made with the heirs, creditors, executors, administrators, and other interested parties to transfer title to the security to the continuing individual and to avoid liquidating the assets so that the individual can continue with the loan on a feasible basis.

(4) If continuation is approved, all reasonable and practical steps, short of foreclosure or other litigation, will be taken to vest title to the security in the joint debtor or transferee.

(5) The deceased borrower's estate may be released from liability for the FmHA indebtedness if title to the security is vested in the joint debtor or transferee, and:

(i) The full amount of the debt is assumed, or

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property, and the County Committee recommends release of liability.

(h) *Special servicing of deceased EO borrower cases.* If the EO loan is secured, all paragraphs in this section will be followed. If the EO loan is unsecured, paragraph (a), (b), (c), (d), and (e) of this section will be followed along with the following requirements.

(1) An individual who is liable for the indebtedness of the deceased borrower and wishes to continue with the EO debt and the EO property, may do so in accordance with paragraph (g)(1) of this section.

(2) A surviving member of the deceased borrower's family, a joint operator with the deceased borrower, a relative, or other individual who is not liable for the EO debt who desires to continue with the farming or other operation may do so in accordance with paragraph (g)(2) of this section. This individual must execute a loan agreement in addition to the assumption agreement and secure the EO debt with a lien on the remaining EO property when title to the property is vested in the individual and the County Supervisor determines that security is necessary to protect the interests of the deceased borrower's family or FmHA.

(3) If no individual listed in paragraph (h) (1) and (2) of this section wishes to continue, but a member of the borrower's family turns over to FmHA the EO property in which the estate has an interest and which is not essential for minimum family living needs, the County Supervisor will take possession

of EO property and sell it in accordance with § 1962.42 of this Subpart. If this cannot be done, or if real property is involved, the case will be referred to OGC. If the property is sold, notice will be delivered to any of the borrower's heirs who are in possession of the property and to any administrator or executor of the borrower's estate.

§ 1962.47 Bankruptcy and insolvency.

(a) *County Supervisor's responsibility.* (1) If a borrower becomes a debtor in proceedings under any State or Federal bankruptcy or State insolvency law, the County Supervisor will promptly report the facts and forward the borrower's case file and other pertinent information and documents to the State Director for appropriate handling. The County Supervisor will keep the State Director informed of further developments, but will take no other action unless directed by the State Director or OGC.

(2) If the borrower has no attorney, the County Supervisor will mention this in the report sent to the State Director. The State Director will ask OGC's advice on how to handle such a case to make sure that the borrower is given any required notice of loan servicing alternatives.

(3) The County Supervisor will send Forms FmHA 1924-14, 1924-25 and 1924-26 together with Exhibit D, "Notice to Borrower's attorney Regarding Loan Servicing Options," (available in any FmHA Office) to the attorney of a farmer program loan borrower as soon as the County Supervisor learns that a bankruptcy has been filed. None of the boxes on Form FmHA 1924-25 will be checked and the blank spaces will be left blank. Exhibit D explains that FmHA wants the borrower to know about the various farmer program loan servicing tools. The bankruptcy code's automatic stay prevents FmHA from contacting the borrower directly. Exhibit D also explains that borrowers who have filed Chapter 11 and 13 bankruptcies must either dismiss their bankruptices or request and be granted relief from the automatic stay. Then the borrower must complete and return Form FmHA 1924-26 before FmHA will consider or grant any request for servicing. Until the Chapter 11 or 13 is dismissed or relief from the automatic stay is granted, FmHA will not discuss any of the servicing options with either the borrower or the borrower's attorney. Borrowers who have filed Chapter 7 bankruptcies must either dismiss their bankruptices or must reaffirm their entire FmHA debt on the existing terms and then return Form FmHA 1924-26. FmHA will not discuss any of the options with either the borrower or the borrower's attorney so long as a Chapter 7 bankruptcy is pending.

(b) *State Director's responsibility.* On receipt of the file and related material, the State Director will determine whether FmHA has security for the debt and whether the debtor has other assets from which FmHA could make a substantial collection. If OGC so advises, Form FmHA 1951-6, "Borrower Account Description Flag," will be prepared and distributed according to the FMI advising the Finance Office to flag the borrower's account indicating bankruptcy action is pending (BAP).

(1) If there is no security and no other assets from which a substantial recovery could be made, the file and related material will be returned to the County Officer with a memorandum indicating the State Director's determination and advising that a proof of claim will not be filed unless the County Supervisor learns that the debtor has assets not previously known to exist. If assets are found before the time for filing claims has expired (within 6 months from the first date set for the first meeting of cretitors), the County Supervisor will resubmit the case to the State Director.

(2) If a substantial recovery could be made, the State Director will take the following actions:

(i) The State Director will execute Form FmHA 455-18, "Proof of Claim of the United States of America Entitled to Priority of Payment," or other form approved by OGC covering all indebtedness to FmHA, except any judgments obtained by a U.S. Attorney, and send it to OGC with attachments that are required by a State supplement.

(ii) If a State Director knows that a judgment has been obtained by a U.S. Attorney, the State Director will notify OGC even though that judgment has been charged off.

(iii) The State Director, on OGC's advice, will instruct the County Supervisor about actions to take with respect to meetings of creditors.

(iv) If an insured loan is not held by FmHA and has not been assigned to FmHA, the State Director will arrange to have the note repurchased. If there is a problem accomplishing this, the State Director will ask OGC for advice.

(v) The State Director will take no other action without OGC's approval.

(c) *Liquidation.* (1) No security can be liquidated without OGC approval.

(2) If a bankruptcy has been dismissed, the account will be liquidated without regard to the bankruptcy.

(3) In Chaper 11 or Chapter 13 cases, if liquidation is necessary it will be accomplished in accordance with either § 1872.17 of Part 1872 of this chapter (FmHA Instruction 465.1) or § 1962.40 of this subpart, as applicable. The advice of OGC will be obtained before any notices are sent to the borrower.

(4) In Chapter 7 farmer program loan cases, loans can be liquidated only after a discharge hearing has been held and if the borrower has not reaffirmed the debt. The borrower will be sent an acceleration notice (Exhibit E to Subpart A of Part 1955 of this chapter) and there will be no appeal of the acceleration. Then the account will be liquidated.

(5) When security is liquidated, the proceeds, after payment of costs, will be applied first to the interest accrued to the date of filing the petition in bankruptcy and then to the principal of the debt. Additional proceeds will be applied to the interest accrued from the date the petition in bankruptcy was filed to the date of payment. When the payments are sent to the Finance Office, the County Supervisor will give the date the petition in bankruptcy was filed.

(d) After prior review and approval by OGC, a State Supplement will be issued to explain any rules or practices of local bankruptcy judges or trustees which affect the provisions of this section.

§ 1962.48 [Reserved]

§ 1962.49 Civil and criminal cases.

All cases in which court actions to effect collection or to enforce FmHA rights are recommended, as well as actions relating to apparent violations of Federal criminal statutes, will be handled under this section.

(a) *Criminal action.* When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with FmHA Instruction 2012-B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding any administrative action on the matter/borrower other than routine servicing actions on existing loans.

Cases requiring further action by OGC will be handled in accordance with paragraph (c) of this section.

(b) *Civil action.* Court action or other judicial process will be recommended to OGC when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect FmHA's property/financial interests have been exhausted. However, if an emergency situation exists or criminal action is to be recommended, the case will be submitted to OGC without taking the action necessary to report the information required by Part II of Form FmHA 455-22, "Information for Litigation." This is because delay in submitting cases in emergency situations may affect the financial interests of FmHA and collection efforts may adversely affect the criminal investigation and/or criminal prosecution.

(1) Civil action will be recommended when one or more of the following conditions exists:

(i) there is a need to repossess security or EO property or to foreclose a lien and such action cannot be accomplished by other means authorized in this subpart:

(ii) There is a need for filing claims against third parties because of a conversion of security or other action.

(iii) Payment due on debts are not made in accordance with the borrower's ability to pay, and the borrower has assets or income from which collection can be made.

(iv) The borrower has progressed to the point that credit can be obtained from other sources, has agreed in the note or other instrument to do so, but refuses to comply with that agreement.

(v) FmHA or its security becomes involved in court action through foreclosure by a third-party lienholder or through some other action.

(vi) Other conditions exist which indicate that court action may be necessary to protect FmHA's interests.

(2) Claims of less than $600 principal will not be referred to OGC for court action unless:

(i) A statement of facts is submitted as to the exact manner in which the interest of FmHA, other than recovery of the amount involved, would be adversely affected if suit were not filed; and

(ii) Collection of a substantial part of the claim can be made from assets and income that are not exempt under State or Federal law. A State supplement will be issued to set forth such exemptions or a summary of those exemptions with respect to property to which FmHA normally would look for payment such as real estate, livestock, equipment, and income.

(3) When a borrower has not properly accounted for the proceeds of the sale of security, it is the general policy to look first to the borrower for restitution rather than to third-party purchasers. In line with this policy the remaining chattel security on which FmHA holds a first lien usually will be liquidated before demand is made, or civil action to recover from third-party purchasers.

(i) When the County Supervisor determines that full collection cannot be made from the borrower and that it will be necessary to collect the full value of the security purchased by a converter, a demand (see Guide Letter 1962-A-1, a copy of which is available in any FmHA county office) will be sent to the purchaser at the same time that Exhibit D or E of Subpart A of Part 1955 of this chapter, is sent to the borrower.

(ii) When the County Supervisor determines that it is likely that action will have to be taken to collect from third-party pruchasers, the County Supervisor will notify such purchasers by letter (see Guide Letter 1962-A-2, a copy of which is available in any FmHA county office) that FmHA security has been purchased by them and that they may be called upon to return the property or pay the value thereof in the event restitution is not made by the borrower. If it later becomes necessary to make demand on such third-party purchasers, FmHA will do so unless the case already has been referred to OGC or the U.S. Attorney, in which event the demand will be made by one of those offices.

(iii) When restitution is made by the borrower, or a determination is made, with the advice of OGC, that the facts in the case do not support the claim against the third-party purchaser, the third-party purchaser will be informed by the County Supervisor that FmHA will take no adverse action (see Guide Letter 1962-A-3, a copy of which is available in any FmHA county office). Ordinarily, it will not be necessary to inform the third-party purchaser of OGC's decision when OGC determines that the facts support the claim against the third-party purchaser but no substantial part of the claim can be collected. If OGC makes such a determination and the third-party purchaser asks what determination has been made, the County Supervisor will say that no further action is to be taken on the claim "at this time."

(iv) In addition, unless personal contacts with the third-party purchaser, or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not been received, a follow-up letter (see Guide Letter 1962-A-4, a copy of which is available in any FmHA county office) will be sent by the State Director as soon as possible after the 15-day period set forth in the demand letter has expired. Unless response to the State Director's followup letter or personal contacts or other efforts indicate that further demand would be futile, an additional follow-up letter will be sent to the third-party purchaser by OGC after the case has been referred to that office.

(c) *Handling civil and criminal cases.* All cases in which court actions to effect collection or to enforce the rights of FmHA are recommended, will be forwarded to OGC by the State Director in accordance with paragraph (c)(3) of this section.

(1) County Office actions. Forms FmHA 455-1, "Request for Legal Action," and FmHA 455-22 will be prepared. Form FmHA 455-2, "Evidence of Conversion," will be prepared for each unauthorized disposal. The original and two copies of Forms FmHA 455-1, 455-22, and, when applicable, FmHA 455-2, together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA 455-1. Appropriate recommendations regarding civil actions will be made on Forms FmHA 455-1 and FmHA 455-22 against the borrower or others. When a case is referred to the State Office, the County Supervisor will keep that office informed of any future developments in the case. If Forms FmHA 1924-14, 1924-25 and 1924-26 have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) District Office actions. Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be prepared and sent after any appeal is concluded, or Form FmHA 1924-26 was not returned within the specific allowed time.

(3) State Office actions. (i) upon receipt of Form FmHA 455-1 and, when applicable, Form FmHA 455-2, the State Director will analyze each form to determine if all of the necessary information is documented and, if not, whether an appropriate effort was made to obtain the information. If all the necessary information is not documented, the State Director will return the case and request the County Supervisor to obtain the information to complete Forms FmHA 455-1 and 455-2.

The State Director may assign any qualified FmHA employee to help a County Supervisor obtain the information necessary to complete the reports. After diligent efforts, if FmHA employees are unable to obtain the additional information, the case will be returned to the State Office with an explanation of why the information is unavailable.

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC for civil action, if referral is required under the policy expressed in this section. If such referral is not required, the State Director will set forth in Item 19 of Form FmHA 455-1 the basis for the determination not to refer the case and instructions for follow-up servicing action. The State Director will not recommend a third-party conversion claim to the OGC if more than one year has run from the date of the annual accounting following the disposition of security, unless the Administrator or delegate determines a longer period of time should be applied either because of compelling circumstances such as the case has been referred to and accepted by OIG for criminal or civil investigation. The period of time during which a suit may be filed is set by federal statute and is not changed by this section. Demands on third-party purchasers will be made in accordance with paragraph (b) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil aspects of the case on Form FmHA 455-1.

(A) When cases are referred to OGC, the County Office case file, Form FmHA 455-1, and, when appropriate, Form FmHA 455-2 will be transmitted. In addition, when the institution of civil court proceedings by FmHA is recommended, the notes, financing statements, security agreements, loan agreements, other legal instruments and copies thereof, as required by OGC, and Form FmHA 451-11, "Statement of Account," or Form FmHA 451-25, "Status of Account," and Form FmHA 455-22 will be submitted to OGC. The State Director, with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed.

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for civil court or other action will be obtained from the Finance Office, or County Office, by the State Director. When the time required for obtaining the above material or documents may jeopardize FmHA's interest by permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director, will forward such material or documents directly to OGC or (at the State Director's direction) to the U.S. Attorney.

(d) *Actions on cases referred to OGC.* When a civil case is referred to OGC, the State Director will notify the County Supervisor of the referral and will return the County Office case file when it is no longer needed. The State Director will also prepare and distribute Form FmHA 1951-6 according to the FMI advising the Finance Office to flag the borrower's account indicating court action is pending (CAP). After notice of the referral is received by the County Supervisor, no collection or servicing action will be taken except upon specific instructions from the State Director or OGC. However, when a borrower voluntarily proposes to make a payment on an account, the County Supervisor will accept the collection unless notice has been received that the case has been referred to the U.S. Attorney for civil action. The County Supervisor will immediately notify OGC directly by memorandum, with a copy sent to the State Director, of any collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect a case which has been referred to OGC.

(e) *Actions on cases referred to the U.S. Attorney and on judgment cases (including third-party judgments).* OGC will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to the U.S. Attorney or is otherwise closed. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Forms FmHA 450-1, "Statement of Account," to such borrowers. OGC will also notify the State Director when a judgment (incuding third-party) is obtained.

(1) When the County Supervisor receives notice from OGC that a judgment (including third-party) has been obtained, the County Supervisor will notify the Finance Office to establish a judgment account by submitting Form FmHA 455-20, "Notice of Judgment."

(2) After notice has been received that a case has been referred to the U.S. Attorney or a judgment has been obtained and has not been returned to FmHA by the U.S. Attorney, no action will be taken by the County Supervisor except upon specific instructions from the State Director, OGC, or the U.S. Attorney. However, the County Supervisor will keep the State Director informed of any developments which may affect the FmHA security interest or any pending court action to enforce collection. If information is obtained indicating that such debtors have assets or income not previously reported by the County Supervisor to the State Director from which collection of such judgment accounts can be obtained, the facts will be reported to the State Director. The State Director immediately will notify OGC of any developments which might have a bearing on cases referred to the U.S. Attorney, including such judgment cases.

(i) If the debtor proposes to make a payment, FmHA employees will not accept such payment but will offer to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the U.S. Attorney. In such case, the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(ii) Collection items received through the mail from the debtor or from other sources by the County Office to be applied to such accounts will be forwarded by the County Supervisor through OGC to the appropriate U.S. Attorney. Likewise, collections received by the District Director or the State Office will be forwarded through OGC to the appropriate U.S. Attorney. Such items will be forwarded in the form received except that cash will be converted into money orders made payable to the Treasurer of the United States. The money order receipts will remain attached to the money orders. Form FmHA 451-1 will not be issued in any such case. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received.

(3) When the U.S. Attorney has returned a judgment case to FmHA, the County Supervisor is responsible for servicing it as follows:

(i) When the judgment debtor has the ability to make periodic payments, action will be taken by the County Supervisor to make arrangements for the judgment debtor to do so.

(ii) Any payments received from such debtor by FmHA will be handled by issuing Form FmHA 451-1 and converting and transmitting such payments as provided in Subpart B of Part 1951 of this chapter. The U.S. Attorney will be informed through OGC of payments received only when the debtor pays a judgment in full.

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgment can be collected. If such debtors have either assets or income from which collection can be made and they have declined to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with § 1864.12 of Part 1864 of this chapter (FmHA Instruction 456.1, paragraph XII).

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

§ 1962.50 [Reserved]

Exhibits A, B, C, and D

Note. Exhibits A, B, C, and D do not appear in the Code of Federal Regulations.

Dated: October 4, 1985.

Harris D. Blake

Acting Administrator, Farmers Home Administration.

[FR Doc. 85-25644 Filed 10-31-85; 8:45 am]

BILLING CODE 3410-07-M