IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of March, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-7989
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Editorial note: For the President's letter to the Chairman of the U.S. International Trade Commission, dated Mar. 29, 1985, on the subject of the import fees, see the *Weekly Compilation of Presidential Documents* (vol. 21, p. 385).

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1872, 1942, 1944, 1951, 1955 and 1962

Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) is issuing three new regulations to prescribe policies and procedures for servicing cases where an unauthorized loan or other financial assistance was received. These regulations cover FmHA's housing and community and business programs and amend portions of existing regulations which deal with unauthorized interest credits on section 502 Rural Housing loans and unauthorized loans and grant assistance under section 504. The regulations apply to FmHA loans, grants, and other financial assistance, such as interest subsidies and set forth detailed procedures for collecting loans, grants, and subsidies which were unauthorized. This action establishes a set of uniform policies and procedures for servicing unauthorized loans or other cases of financial assistance since the Agency has no formalized procedures. Occasionally, FmHA program review assessments or external audits reveal cases where program recipients were not entitled to the loan or other assistance granted by FmHA. These regulations address such cases and set forth various corrective measures to remedy the violation. This action has the effect of facilitating the effective servicing of cases falling within the category of unauthorized loans or other assistance.

DATES: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Frances B. Calhoun, Chief, Property Management Branch, Single-Family Housing Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5309, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, Telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures set forth in Departmental Regulation 1512-1 which implements Executive Order 12291 and was determined to be "nonmajor" since the annual effect on the economy is less than $100 million and will create no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document was reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action which significantly affects the quality of the environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an environmental impact statement is not required.

Some of the FmHA programs/activities affected by these regulations are subject to the provisions of intergovernmental consultation in the manner delineated in 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Administration Programs and Activities." See FmHA Instruction 1940-J available in any FmHA Office. The FmHA Water and Waste Disposal Loan and Grant and Community Facilities Loan Programs are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

Dwight O. Calhoun, Acting Associate Administrator, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because the number of FmHA borrowers affected by this rule is estimated to be no more than one percent of the total caseload, and a low volume of the one percent is expected to be small entities. The economic impact on the small entities affected is not expected to be significant to their overall operations.

Primary policies and authorities set forth in these regulations are:

(a) An effort will be made to collect all financial assistance which is determined to be unauthorized.

(b) When the recipient of unauthorized assistance does not repay that assistance and the amount involved is $1,000 or more, the security, if any, should be liquidated. Exceptions are cases where it is determined (1) The recipient was not at fault, (2) it would be highly inequitable to require liquidation, and (3) continuation with the loan will not adversely affect FmHA's financial interests; or (4) in any case where it is clearly not in the Government's best financial interest to force liquidation. In those case, alternative options in lieu of calling the loan are outlined for each program.

(c) Appeal rights will be given to the recipient unless the recipient and the servicing official have reached an agreement on satisfactory arrangements for repayment.

(d) In cases where the recipient does not repay the unauthorized assistance at once and liquidation is not required, account adjustments will be made in accordance with the Subpart applicable to the type loan involved.

(e) The Administrator, FmHA, will have authority to make exceptions to provisions of these Subparts which are not inconsistent with the statute authorizing the FmHA program involved.

Provisions of these regulations require complying changes to Subpart A of Part 1872, Subparts A and H of Part 1942, Subparts A and J of Part 1944, Subparts E and G of Part 1951, Subpart A of Part 1955, and Subpart A of Part 1962 of this chapter.

On May 23, 1984, a proposed rule was published in the Federal Register (49 FR 21744) for a 60-day review and comment period. The proposed rule contained four Subparts. Subpart L, pertaining to Farmer Programs, has been withheld from this final rule. When the regulations for special servicing of delinquent and problem case farm

borrowers are published as a final rule. Subpart L will be published simultaneously.

There was only one commentor from the private sector, and those comments were confined to Subpart M, §§ 1951.606 and 1951.607. These comments were, basically, that it is untenable for the Government to attempt to recoup financial assistance to which the recipient was not entitled when it was received because of error on the part of an FmHA employee. Sections 1951.608 and 1951.612 were apparently overlooked by the commentor, because § 1951.608 provides that where the recipient is (1) not at fault, (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, FmHA may continue with the recipient. Section 1951.612 then specifies the servicing options for different situations when the three provisions outlined above are met.

The reasoning behind these regulations is:

(1) There are cases where recipients have obtained financial assistance to which they were not entitled.

(2) Regardless of the reason for their receiving that assistance, it is money owed to the Government and an effort must be made to collect it.

(3) If it is not repaid in full promptly, provisions are made to continue with the recipient on existing or modified terms if there was no intent by the recipient to defraud, it would be inequitable to enforce collection, and the Government's financial interests are not adversely affected. A number of comments were made by FmHA employees and some changes resulted from these. Included in this category are:

(a) In the "Policy" section of each subpart, the phrase was added: ". . . unless any applicable Statute of Limitations has expired."

(b) In the "Decision on servicing actions" section of each subpart, headings were added to each subsection to direct the reader more easily through the section.

(c) In the respective sections concerning liquidations, [§§ 1951.608 (e)(1)(i)(A), 1951.658 (e)(1)(i)(A), and 1951.708 (e)(1)(i)(A)], a phrase is added to clarify that the amount outstanding includes the total of principal, accrued interest, and any recoverable costs charged to the account.

(d) The titles of §§ 1951.618, 1951.668, and 1951.715 were changed for clarification.

(e) The definition of "servicing official," was expanded to provide that "District Director" could also include a District Loan Specialist if so designated.

(f) In Subpart N, modifications were made to provide for use of a direct input computer form to notify the Finance Office of account adjustments. This form (Form FmHA 1951–52) is unique to the accounting system used for Multiple Family Housing accounts.

(g) Several other minor changes were made to correct typographical errors and for additional clarification.

Several other suggestions from FmHA personnel were considered but not adopted, primarily because it was deemed they did not fit within the scope of these regulations or were otherwise not appropriate.

Catalog of Federal Domestic Assistance Titles and Numbers:
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, and Rural areas.

7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, and Water supply—Domestic.

7 CFR Part 1944

Farm labor housing, Aged, Grant programs—Housing and community development, Home Improvement, Loan programs—Housing and community development, Migrant Labor, Public housing, Rent subsidies, Low and moderate income housing—Rental, Mortgages, Rural housing, and Subsidies.

7 CFR Part 1951

Account servicing, Credit, Grant programs—Housing and community development, Interest credit, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Recapture of subsidy, Reporting requirements, and Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

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

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

PART 1872—REAL ESTATE SECURITY

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

§ 1872.17 [Amended]

1. In § 1872.17 paragraph (g), in the 6th and 9th lines from the end of the paragraph, the number of the form entitled "Accelerated Repayment Agreement" is changed from "Form FmHA 465–11," to "Form FmHA 1965–11."

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

2. In § 1942.17, paragraph (r)(5) is revised to read as follows:

§1942.17 Appendix A—Community Facility Loans.

* * * * *

(r) * * *

(5) Other loan servicing actions will be in accordance with Subparts E and O of Part 1951 of this chapter.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

3. § 1942.376 is revised to read as follows:

§ 1942.376 Grant servicing.

Grants will be serviced in accordance with §1951.215 of Subpart E and Subpart O of Part 1951 of this chapter.

PART 1944—HOUSING

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

4. In § 1944.34, paragraph (j) is revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(j) Unauthorized interest credit. When it is determined that a borrower has received interest credit to which he/she was not entitled (unauthorized interest credits), the case will be serviced according to Subpart M of Part 1951 of this chapter.

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

5. § 1944.473 is revised to read as follows:

§ 1944.473 Unauthorized loans and/or grants.

Unauthorized loans and/or grants are those where it is determined the recipient was not eligible for the assistance received or where loan and/or grant was approved for unauthorized purposes. A case of this type will be serviced according to Subpart M of Part 1951 of this chapter.

PART 1951—SERVICING AND COLLECTIONS

Subpart E—Servicing of Community Program Loans and Grants

§ 1951.201 [amended]

6. At the end of § 1951.201, the following sentence is added: "Community Programs cases where unauthorized loan or other financial assistance has been received will be serviced according to Subpart O of Part 1951 of this chapter."

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

§1951.301 [Amended]

7. At the end of § 1951.301, the following sentence is added: "Single Family Housing cases where unauthorized loan or other financial assistance has been received will be serviced according to Subpart M of Part 1951 of the chapter."

8. Subpart M is added to Part 1951 and reads as follows:

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

Sec.

1951.601 Purpose.
1951.602 Definitions.
1951.603 Policy.
1951.604 Categories of unauthorized SFH assistance.
1951.605 [Reserved]
1951.606 Initial determination that unauthorized assistance was received.
1951.607 Notification to recipient.
1951.608 Decision on servicing actions.
1951.609–1951.611 [Reserved]
1951.612 Servicing options in lieu of liquidation or legal action to collect.
1951.613–1951.617 [Reserved]
1951.618 Account adjustments and reporting requirements.
1951.619 Exception authority.
1951.620–1951.649 [Reserved]
1951.650 OMB control number.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

§ 1951.601 Purpose.

This Subpart prescribes the policies and procedures for servicing Single-Family Housing (SFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. As used in this Subpart, SFH includes section 502 Rural Housing (RH) loans and section 504 loans and grants, as well as sections 523 and 524 Rural Housing Site (RHS) loans, Section 523 Self-Help Technical Assistance (TA) grants, and section 525 Technical and Supervisory Assistance (TSA) grants.

§1951.602 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 release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(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 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) *Recipient.* "Recipient" refers to an individual or entity that received a loan, an interest subsidy, or a grant which was unauthorized.

(h) *Servicing official.* For all Single-Family Rural Housing loans or section 504 grants, the servicing official is the County Supervisor; for all other types of loans or grants, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated.

(i) *Unauthorized assistance.* Any loan, interest subsidy, or grant received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible. Interest subsidy includes interest credits, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§1951.603 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired.

§1951.604 Categories of unauthorized SFH assistance.

(a) Unauthorized SFH assistance includes but is not limited to these categories:

(1) *Section 502 loan:* (i) The recipient was not eligible for a loan.

(ii) The recipient was eligible for a loan but had an income in a category for which there were no funds available at the time the loan was approved, and the loan was obligated from funds designated for another income category. For example, an otherwise-eligible recipient with above-moderate income who received a loan from low- or moderate-income funds. This does not include a loan obligated as low-income where the income rose to moderate prior to closing provided the case was handled according to § 1944.33(a) of this chapter.

(iii) The recipient was eligible and the loan was made for authorized purposes but the recipient received unauthorized subsidy benefits because the loan was closed at an interest rate lower than the correct rate in effect when the loan was approved.

(iv) The loan was made for unauthorized purposes including but not limited to the following:

(A) To buy or improve income-producing land; or buy, build or improve income-producing buildings or finance a building not essential for RH purposes.

(B) To buy, build, or improve a dwelling which exceeds modest standards for size, design, and cost as compared to other housing in the locality for low- and moderate-income families as defined in § 1944.16 (a) or (b) or Subpart A of Part 1944 of this chapter.

(C) To buy or improve a nonfarm tract that exceeds a minimum-adequate site as defined in § 1944.11(c) of this chapter.

(D) To refinance debts not meeting the requirements of § 1944.22 of this chapter.

(E) To buy, build, or improve with an initial loan, a dwelling located in an area not designated as rural, unless it is on a farm as defined in § 1944.2(h) of this chapter.

(v) Unauthorized or excessive interest credits were granted.

(vi) Where recapture of subsidy was due but:

(A) The loan was assumed by another party without collecting the amount due from the transferor (or without the transferee assuming it); or

(B) Final payment was accepted but did not include the recapture amount due.

(2) *Section 504 loan or grant.* (i) The recipient was not eligible for a loan or grant.

(ii) The loan or grant was made for unauthorized purposes.

(iii) The recipient obtained more than the statutory maximum amount of loan and/or grant.

(3) *Sections 523 and 524 Rural Housing Site (RHS) loan, section 523 Self-Help Technical Assistance (TA) grant, and section 525 Technical and Supervisory Assistance (TSA) grant.*

(i) The recipient was not eligible for the loan/grant.

(ii) The loan or grant was made for unauthorized purposes.

(b) Categories *not* to be considered as unauthorized assistance within the scope of this Subpart include but are not limited to:

(1) The determination is made that the recipient did not have repayment ability for a loan initially.

(2) The determination is made that the recipient could likely have obtained credit elsewhere or financed housing needs with other resources at the outset.

§ 1951.605 [Reserved]

§ 1951.606 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 FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA assistance. If FmHA has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional 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 § 1951.607 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 recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, and attorneys, when the recipient 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.

§ 1951.607 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy 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 recipients 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 recipient to discuss with the servicing official the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official 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.

§ 1951.608 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient 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 servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of improperly granted interest credit, as a "Miscellaneous Collection for Application to the General Fund."

(4) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in § 1951.612(b) or § 1951.618(a)(1)(i) as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.612 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.602(d);

(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) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.607 within 30 days the servicing official will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized;

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the servicing official will proceed with the actions outlined in paragraph (e) of this section, as applicable. If, during the course of appeal, the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraphs (a), (b), or (e) of this section.

(e) *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 recipient refuses to execute the documents necessary to make account adjustments or establish an obligation to repay the unauthorized assistance as provided in § 1951.612, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. A letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be required in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with Subpart A of Part 1955 of this Chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $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 (e)(i)(B) of this section, a request for an exception under § 1951.619 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) of this section are met, but the recipient does not repay or refuse to execute documents to effect necessary account adjustments according to the provisions of § 1951.612, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section, account adjustments will be made by FmHA without the signature of the recipient according to § 1951.618(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Forms FmHA 1951–12, "Correction of Loan Account," of FmHA 1951–13, "Change in Interest Rate," as applicable, enclosed to reflect the adjustments.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as note-only, collection-only, or unsatisfied balance after liquidation).* The servicing official 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.

§§ 1951.609–1951.611 [Reserved]

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.608(b) are met, servicing options outlined in this section may be considered. Accounts will be serviced according to this section and § 1951.618.

(a) *Servicing SFH cases involving unauthorized assistance.*—(1) *Outstanding Section 502 loan.* Continuation with the loan may be authorized and one of the following servicing actions will be taken as appropriate to the case:

(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 an "Other Real Estate" (ORE) 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), 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.

(ii) If the recipient was eligible for a loan and the loan was approved for authorized purposes but the incorrect interest rate was charged, resulting in receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. The change in interest rate will be accomplished according to § 1951.618 (a)(1)(iii) or (b)(1)(i), as applicable. A delinquency which is created through these actions will be serviced according to Subpart G of Part 1951 of this Chapter.

(iii) If the recipient was not eligible for a loan, or if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604, the recipient may be allowed to enter into an accelerated repayment agreement according to FmHA Instruction 465.1, XVII G, § 1872.17(g) of Subpart A of Part 1872 of this Chapter except that the above-moderate interest rate which was in effect on the date the loan was

approved will be used according to Exhibit C of this Subpart (available in any FmHA office). This provision should be used only where repayment ability can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be reclassified as an ORE loan.

(iv) When the case is not serviced according to paragraphs (a)(1) (i), (ii), or (iii) of this section, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, *except* that, if interest credits are granted in a case where continuation is authorized under the provisions of this paragraph (a)(1)(iv) of this section, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credits are granted in cases of this type, the following actions must be taken:

(A) The borrower must agree in writing to the recapture of subsidy as outlined in paragraph (a)(1)(iv) of this section executing an agreement in the format of Exhibit E of this Subpart (available in any FmHA office).

(B) The original executed agreement will be placed in the case file, and the borrower's card in the management system will be marked "ALL SUBSIDY SUBJECT TO RECAPTURE—SEE AGREEMENT ATTACHED TO NOTE OR ASSUMPTION AGREEMENT."

(C) If necessary to secure recapture, a supplemental mortgage will be taken with the advice of OGC.

(D) If the borrower refuses to execute the agreement prescribed in paragraph (a)(1)(iv)(A) of this section, interest credits will *not* be granted on the loan.

(2) *Unauthorized interest credits.*

(i) *On outstanding loan.* Continuation with the loan is authorized provided the recipient executes the forms necessary to effect correction of the account through reversal and reapplication of payments. The account will be serviced according to § 1951.618(a)(3).

(ii) *On inactive loan.* Have the recipient execute a promissory note and give the best mortgage obtainable to secure repayment of the unauthorized interest credits. The interest rate will be the same as in the promissory note for the loan which was subsidized through the unauthorized interest credits, and the term will be within the recipient's repayment ability or a maximum of 5 years.

(3) *Outstanding Section 504 loan.*

(i) *Secured loan.* Continuation under the existing terms is authorized.

(ii) *Unsecured loan.* Continuation under the existing terms is authorized, and the best mortgage obtainable will be taken to secure the loan.

(4) *Outstanding Section 523 or 524 Rural Housing Site loan.* When the objectives of the loan can be achieved, continuation under the existing terms is authorized.

(5) *Section 504 grant.* Have the recipient execute a promissory note and the best mortgage obtainable to secure repayment of the unauthorized assistance. The amount will be the grant amount and the terms will be as follows:

(i) If the recipient was eligible for a section 504 loan at the time the grant was made, the interest rate and term will be the same as if a section 504 loan had been made instead of a great.

(ii) If the recipient was not eligible for either a section 504 loan or grant, or if the grant was made for unauthorized purposes, the note will bear interest at 5 percent for a term of not more than 5 years.

(6) *Section 523 Self-Help Technical Assistance (TA) grant or Section 525 Technical and Supervisory Assistance (TSA) grant.* If the grant objectives can be achieved, continuation under the terms of the grant agreement is authorized. If the grant objectives cannot be achieved and the grant assistance actually paid out is to be repaid as provided in the grant agreement, interest will be charged at the rate specified in the grant agreement for default of 5 percent per annum if the grant agreement does not specify an interest rate for default cases. When grant assistance is to be repaid, no further disbursement of committed funds will be made.

(b) *Collections, recordkeeping, and reporting in connection with repayment of unauthorized grant assistance.* When a recipient is to repay unauthorized grant assistance as provided in paragraphs (a)(5) or (a)(6) of this section, the servicing official must maintain records on the "account" as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due, and all collections will be remitted with Form FmHA 451–2 as "Miscellaneous Collections for Application to the General Fund." For cases identified in *OIG audits only*, the servicing official will report by the 1st of March, June, September, and December of each year the following information on cases of this type to the State Director: Recipient's name, case number, fund code, audit report number, audit finding number, date of claim, original amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance. The State Director will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

§ 1951.613–1951.617 [Reserved]

§ 1951.618 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 the cases of unauthorized assistance identified by an OIG audit will be reported to the Finance Office by submission of Form FmHA 1951–12, completed in accordance with the FMI. The Finance Office will flag the account for monitoring and reporting as required. Any 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."

(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was made for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA 451–2, in accordance with the FMI. Form FmHA 1951–12 will reflect the amount and the Schedule Number.

(ii) *Accelerated repayment agreement.* If the recipient has entered into an "Accelerated Repayment Agreement," Form FmHA 1965–11 will be prepared and distributed according to the FMI, attaching the original form to Form FmHA 1951–12.

(iii) *Continuation with loan under existing or modified terms.* When it is determined that all the conditions outlined in § 1951.608(b) are met and continuation with the loan under the existing or modified terms is authorized, the servicing official will submit Form FmHA 1951–12 to the Finance Office to reflect this.

(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 ORE, the loan must be identified and serviced by the servicing official accordingly.

(3) *Unauthorized interest credits.* Unauthorized interest credits will be recovered through submission of Form FmHA 1944–15, "Interest Credit Agreement Cancellation," or Form FmHA 1944–6, "Interest Credit Agreement," to cancel or adjust the amount of interest credits for each period of time unauthorized interest credits were received. Form FmHA 1951–12 will be prepared in accordance with the FMI and Forms FmHA 1944–15 or 1944–6, as applicable, will be attached. Payments made during the period unauthorized interest credits were received will be reversed and reapplied according to the documents submitted, after which the unauthorized interest credits will be reported to OIG as resolved. A delinquency which is created will be serviced according to Subpart G of Part 1951 of this Chapter.

(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 of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation has not been initiated because of the provisions of § 1951.608(e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to § 1951.612 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 recipient does not sign Form FmHA 1951–12 and any related documents.

(6) *Unauthorized grant assistance.* The State Office will submit a composite report for the State to the Finance Office by the 15th of March, June, September, and December each year, reflecting the information outlined in § 1951.612(b).

(7) *Establishment of account of inactive borrower or judgment account.*

(i) When a recipient agrees to repay unauthorized assistance and executes documents to evidence the obligation, Form FmHA 1951–12 will reflect this, and the Finance Office will establish the account according to the terms shown on Form FmHA 1951–12.

(ii) When a judgment is obtained against a recipient, Form FmHA 1962–20, "Notice of Judgment," will be forwarded to the Finance Office for establishment of a judgment account.

(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. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For circumstances outlined in paragraph (a)(1), (a)(2), or (a)(7)(i) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, 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 or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(2) or (a)(3) of this section, after 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 liquidation action is 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 loan is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (a)(6) of this section, collections and status as reported by the State Office will be included in the report to OIG until the amount is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit cases; however, when receipt of unauthorized assistance is identified by a means other than 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 paragraph (b) of this section, the loan(s) will be serviced in the same manner as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the servicing official will receive Form FmHA 451–26, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing on a loan is necessary, 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 unauthorized interest credits on SFH loans, Form FmHA 1944–15 or Form FmHA 1944–6, as applicable, will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(iii) For accounts to be rescheduled or reamortized, Form FmHA 1965–11, or 452–2, "Reamortization and/or Deferral Agreement," as applicable, will be prepared and submitted in accordance with the respective FMI.

(iv) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such as obligation, the servicing official will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish the account according to the terms of the promissory note.

(v) When a judgment is obtained against a recipient, Form FmHA 1962–20, "Notice of Judgment," will be forwarded to the Finance Office for establishment of a judgment account.

(vi) When 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 Subpart G of Part 1951 of this Chapter.

§ 1951.619 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be 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 maintained if the exception is granted.

§§ 1951.620–1951.649 [Reserved]

§ 1951.650 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 0575–0105.

9. Subpart N is added to Part 1951 to read as follows:

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

Sec.

1951.651 Purpose.
1951.652 Definitions.
1951.653 Policy.
1951.654 Categories of unauthorized assistance.
1951.655 [Reserved]
1951.656 Initial determination that unauthorized assistance was received.
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1951.658 Decision on servicing actions.
1951.659–1951.660 [Reserved]
1951.661 Servicing options in lieu of liquidation or legal action to collect.
1951.662–1951.667 [Reserved]
1951.668 Servicing unauthorized assistance accounts.
1951.669 Exception authority.
1951.670–1951.699 [Reserved]
1951.700 OMB control number.
Exhibits A, B, and C.

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

§ 1951.651 Purpose.

This Subpart prescribes the policies and procedures for servicing Multiple Family Housing (MFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. As used in this Subpart, MFH loans and grants are Section 515 Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans and Sections 514 and 516 Labor Housing (LH) loans and grants.

§ 1951.652 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 release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(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 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) *Recipient.* "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, or a grant which was unauthorized.

(h) *Unauthorized assistance.* Any loan, interest subsidy, or grant, or any portion thereof, received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible.

Interest subsidy includes interest credits, rental assistance, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§ 1951.653 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless, any applicable Statute of Limitations has expired. The prepayment restrictions imposed by Subpart E of Part 1944 of this Chapter do not apply to cases of unauthorized assistance.

§ 1951.654 Categories of unauthorized assistance.

Unauthorized assistance includes, but is not limited to, these categories:

(a) The recipient was not eligible for the assistance.

(b) The property, as approved, does not qualify for the program. For example: An RRH or LH project which clearly is above modest in size, design and/or cost or was not located in an area designated as rural when the initial loan was made.

(c) The loan or grant was made for unauthorized purposes. For example: Purchase of an excessive amount of land.

(d) The recipient was granted unauthorized subsidy in the form of:

(1) Interest credits (IC) on an RRH loan;

(2) Rental Assistance (RA) in connection with an RRH or LH loan; or

(3) A subsidy benefit received through use of an incorrect interest rate.

§ 1951.655 [Reserved]

§ 1951.656 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA assistance. 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 Regional Office of the General Counsel (OCC) 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 Office of the Inspector General (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 § 1951.657 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 recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, management agents and attorneys, when the recipient 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.

§ 1951.657 Notification to recipient.

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed by the servicing official to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy 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 recipients 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 C of this Subpart (available in any FmHA office); and

(3) Establish an appointment for the recipient to discuss with the District Director the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the District Director, the District Director will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the District Director may grant additional time for the recipient to assemble documentation. When an extension is granted, the District Director will specify a definite number of days to be allowed and establish the followup necessary to assure that servicing of the case continues without undue delay.

§ 1951.658 Decision on servicing actions.

When the District Director is the same individual who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the District Director.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient 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 District Director will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," as follows:

(1) In the case of the loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the District Director will report the repayment as outlined in § 1951.668 (a)(1)((i), (a)(3), or (a)(6) as applicable.

(4) In the case of RA, the repayment will be handled as outlined in § 1951.661 (a)(3) and Exhibit E to FmHA Instruction 1930–C.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.668 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.652 (d);

(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) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.657 within 30 days, the District Director will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized;

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the District Director will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the District Director will proceed with the actions outlined in paragraphs (a) or (b) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* If the recipient is unwilling or unable to arrange for repayment as provided in paragraph (a) of this section or continuation is not feasible as provided in paragraph (b) of this section, one of the following actions, as appropriate, will be taken:

(1) *Active borrower with a secured loan.* (i) The District Director will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. Where real property is involved, a letter will be prepared by the District Director and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be necessary in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with Subpart A of 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $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 District Director wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 1951.669 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) or this section are met, but the recipient does not repay or

refuses to execute documents to effect necessary account adjustments according to the provisions of § 1951.661, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section account adjustments will be made by FmHA without the signature of the recipient according to § 1951.668(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Form FmHA 1951–12, "Correction of Loan Account," if applicable.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The District Director 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. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions.

§ 1951.659–1951.660 [Reserved]

§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.

When all of the conditions outlined in § 1951.658(b) are met, an unauthorized loan or grant will be serviced according to this section and § 1951.668, provided the recipient has the legal and financial capabilities.

(a) *Active borrower/grantee.*—(1) *Unauthorized loan.* (i) *Correction of problem.* If the problem causing the assistance to be unauthorized can be corrected, corrective action will be required. For example, where a subsidy was in excess amount; or where the loan included funds for purchase of excess of the unauthorized amount, the recipient will refund the excess land, the recipient will be required to sell the excess land and the proceeds will be applied to the account as an extra payment.

(ii) *Continuation on existing terms.* When there is no specific problem which can be corrected, continuation on the existing terms is authorized.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. All payments made will be reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate. A delinquency which is created will be serviced according to Subpart B of Part 1965 of this Chapter. After reapplication of payments, the loan will be serviced as an authorized loan. Change in interest rate will be accomplished according to § 1951.668. When the recipient is a public body with loans secured by bonds on which interest rate cannot legally be changed or payments reversed or reapplied, continuation on existing terms is authorized.

(3) *Unauthorized interest credits or rental assistance.* In cases involving RA and/or IC, the subsidy benefits should be terminated as provided in the Interest Credit and Rental Assistance Agreement. Unauthorized RA will be serviced as a delinquent account according to paragraph X B of Exhibit E of Subpart C of Part 1930 of this Chapter.

(i) *Tenant's failure to properly report changes in income or size of the household to the borrower.* In cases where a tenant has received RA and/or IC benefits to which he/she was not entitled because of the tenant's failure to properly report income or changes in household size, the borrower-landlord will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Director of the unauthorized benefits and of the agreement made by the tenant to repay. Money collected will be remitted according to the FMI for Form FmHA 1944–9. If the borrower has rental assistance, that portion attributable to RA will be credited to the borrower's RA account. In the event that the tenant does not repay through active collection efforts including legal remedy, the borrower will report the facts to the District Director. The District Director will report to the State Director who will obtain the advice of OGC on further actions.

(ii) *Tenant knowingly misrepresented income or number of occupants to the borrower.* If it appears the tenant has knowingly misrepresented income to the borrower, the District Director will look into the case to determine the facts. If the District Director determines that income or number of occupants was misrepresented, he/she will direct the borrower-landlord to demand and to attempt to recoup improperly received rental subsidy from the tenant. Money collected will be remitted to the Finance Office according to the FMI for Form FmHA 1944–9. If the tenant fails to make restitution, the District Director will refer the case to the State Director who will request the advice of OGC on further actions.

(iii) *Unauthorized RA and/or IC paid due to borrower's error.* Whether unauthorized RA or IC was received by the borrower due to miscalculation or oversight by the borrower or the borrower's management agent, the borrower is required to make restitution to FmHA. This restitution will not be charged to any tenant or to the project as any part of the budget or operating expense. The restitution will be handled as a refund according to the FMI for Form FmHA 1944–49. In the case of a nonprofit or public body borrower, when funds from nonproject sources are not available, the State Director may make an exception and allow project income not required for approved operating budget items to cover the cost of restitution.

(iv) *Rental assistance assigned to wrong household.* When the tenant has correctly reported income and household size, but RA was assigned by the borrower to the household in error, the tenant's RA benefit will be cancelled and reassigned.

(A) *Notification and cancellation.* Before the borrower notifies the tenant, the borrower or management agent will review the case with the District Director. If the District Director verifies that an error was made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice by the borrower or management agent that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

(*1*) The tenant has the right to cancel the lease based on the loss of subsidy benefit to the tenant.

(*2*) The RA granted in error will not be recaptured.

(*3*) The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. The borrower must give the tenant appeal rights under Subpart L or Part 1944 of this Chapter.

(B) *Reassignment of RA.* Rental assistance will be reassigned in accordance with Paragraph XII of Exhibit E to Subpart C of Part 1930 of this chapter.

(v) *Rental assistance in excess of contract.* When rental assistance is

advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(4) *Unauthorized grant assistance.* (i) When the recipient will repay unauthorized grant assistance over a period of time, interest will be charged at the rate specified in the grant agreement for default from the date received until paid. Repayment will be scheduled over a period consistent with the recipient's repayment ability but not to exceed 10 years. The District Director must maintain collection records as the Finance Office cannot set upon an account for repayment of a grant. The District Director will attempt to collect the monies due, and all collections will be remitted with Form FmHA 451–2, "Schedule of Remittances," as a "Miscellaneous Collection for Application to the General Fund." For cases identified in OIG audits only, the District Director will report quarterly to the State Office according to § 1951.668 (a)(6).

(ii) If it is determined the recipient cannot repay unauthorized grant assistance, the assistance may be left outstanding under the terms of the grant agreement. In the case of committed funds not yet disbursed, no further disbursements will be made without prior consent of the Administrator.

(5) *Cases where recipient has both authorized and unauthorized loans outstanding.* When a recipient has both authorized and unauthorized loans outstanding, installments will be scheduled to be paid concurrently on all loans. Each loan will be serviced according to the loan servicing regulations in effect for an authorized loan of its type.

(b) *Inactive borrower.* When a borrower no longer has an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the recipient execute a promissory note in the amount of the assistance determined to be unauthorized in the Exhibit A (available in any FmHA office) letter according to § 1951.657. 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.

(2) Take the best mortgage obtainable to secure the note.

§§ 1951.662–1951.667 [Reserved]

§ 1951.668 Servicing unauthorized assistance accounts.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notifed of necessary account adjustments as outlined in this section, depending upon whether the case or 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.* Ony the cases of unauthorized assistance identified by OIG will be reported to the Finance Office. Form FmHA 1951–12 will be completed in accordance with the FMI, and the District Director will prepare and submit Form FmHA 1951–52, "MFH Record Adjustment—Audit Claim," according to the FMI to advise the Finance Office. 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" as used in this section refers to an account with an active borrower unless specified as "inactive."

(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA 1944–9, in accordance with the FMI. Forms FmHA 1951–12 and 1951–52 will reflect the amount and the Schedule Number from Form FmHA 1944–9.

(ii) *Continuation with loan on existing terms.* When continuation with the loan on the existing terms is approved according to § 1951.661 (a)(1)(ii), the District Director will submit Form FmHA 1951–52 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on an entire loan is changed, Form FmHA 1951–52 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 thereafter be treated as an authorized loan.

(3) *Unauthorized interest credits and/or rental assistance.* Unauthorized rental assistance and/or interest credits will be recovered according to the provisions of § 1951.661. The District Director will report to the State Office by the 1st of March, June, September, and December of each year, the repayment of unauthorized rental assistance and/or interest credits by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at end of reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15th of March, June, September, and December of each year for inclusion in the OIG report.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, Form FmHA 1951–52 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable. The account status will also be amended in the MFH Information Tracking and Retrieval System (MISTR) according to Subpart G of Part 2033 (available in any FmHA State or District Office).

(5) *Liquidation not initiated.* Cases in which Liquidation has not been initiated because of the provisions of § 1951.658 (e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to §1951.661 and this section of this Subpart, and the adjustments will be reflected on Form FmHA 1951–52. In this instance only, account adjustments will be made even though the recipient does not sign Form FmHA 1951–52 and any related documents.

(6) *Unauthorized grant assistance.* When grant funds are to be repaid as provided in § 1951.661(a)(4) the District Director will report to the State Office by the 1st of March, June, September, and December of each year, the amount of collections by account name, case number, fund code, audit report number, finding number, date of claim, original amount of claim, amount collected during period, and the balance owed at end of reporting period on the unauthorized grant assistance. The State Office will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

(7) *Establishment of account for inactive borrower.* When an inactive borrower agrees to repay unauthorize assistance and executes documents to evidence such an obligation, Forms FmHA 1951–12 and 1951–52 will be completed according to the FMIs. The Finance Office will establish the

account according to the terms indicated on Form FmHA 1951–52.

(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. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For an unauthorized loan account as provided in paragraphs (a)(1) or (a)(4) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When continuation with the loan on existing terms is approved, the case will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraphs (a)(2) or (a)(3) of this section, after 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, this will be reported on the next scheduled report (along with collectons, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum according to paragraph (a)(6) of this section will be included in the OIG Report until the account is paid in full.

(vi) When an inactive borrower has agreed to repay unauthorized assistance according to paragraph (a)(7) of this section, the account will be reported initially, and collections and status will be included in each scheduled report until the account is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit case; 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 active account or reinstatement of an inactive account are necessary, or grant funds are repaid. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the District Director will receive Form FmHA 451–26, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing is necessary, Form FmHA 1951–13, "Change in Interest Rate," will be completed according to the FMI and executed by the borrower. Form FmHA 1951–521 will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the District Director 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.

(iii) 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)(i) of this section will be serviced according to Subpart B of Part 1965 of this Chapter.

§ 1951.669 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.670–1951.699 [Reserved]

§ 1951.700 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 0575–0104.

10. Subpart O is added to Part 1951 to read as follows:

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

Sec.

1951.701 Purpose.
1951.702 Definitions.
1951.703 Policy.
1951.704–1951.705 [Reserved]
1951.706 Initial determination that unauthorized assistance was received.
1951.707 Notification to recipient.
1951.708 Decision on servicing actions.
1951.709–1951.710 [Reserved]
1951.711 Servicing options in lieu of liquidation or legal action to collect.
1951.712–1951.714 [Reserved]
1951.715 Account adjustments and reporting requirements.
1951.716 Exception authority.
1951.717–1951.749 [Reserved]
1951.750 OMB Control number.
Exhibits A, B and C.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

§ 1951.701 Purpose.

This Subpart prescribes the policies and procedure for servicing Community and Business Program loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans.

§ 1951.702 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 release from liability of foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Finance assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement agreement/resolution, or bond.

(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 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) *Recipient.* "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, a grant, or a portion of a grant which was unauthorized.

(h) *Servicing official.* For Community Programs, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated. For Business Programs, the servicing official is the State Director or Designee.

(i) *Unauthorized assistance.* Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official or the documents were prepared in error.

§ 1951.703 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitation has expired.

§ 1951.704—1951.705 [Reserved]

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been receive by a recipient of FmHA assistance. If the servicing official has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case file including the advice of the Regional Office of the General Counsel (OGC) will be referred to the National Office for review and comment. 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 § 1951.707 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 recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient.

(c) Submission of inaccurate or false information by another authorized party acting on the recipient's behalf including professionl consultant such as engineers, architects, and attorneys, when the recipient did not know the other part 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.

§ 1951.707 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identifed in an OIG audit report, a copy 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 recipients 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, including any accrued interest to be repaid; and

(3) Establish an appointment for the recipient to discuss with the servicing official the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official 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.

§ 1951.708 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay the amount in question, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be determined according to § 1951.711(a), the servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in § 1951.711(b)(2) or 1951.715 as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.711 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.702(d);

(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) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.707 within 30 days, the servicing

official will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized including any accrued interest.

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an apeal is not made during the time allowed, the servicing official will document the facts in the case file and submit to State Director, if the servicing official is other than State Director, who will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraphs (a), (b), or (e) of this section.

(e) *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 recipient refuses to execute the documents necessary to establish an obligation to repay the unauthorized assistance as provided in §1951.711, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented in the case file. Where real property is involved, a letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. A resolution of the governing body may be required.If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with applicable provisions of Subpart A of Part 1955 of this Chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $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 (e)(1)(i)(B) of this section, a request for an exception under § 951.716 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) of this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according of the provisions of § 1951.711, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section, continuation with the loan on existing terms will be provided. In these cases, the recipient will be notified by letter of the actions taken.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The servicing official will document the facts in the case file and submit it to the State Director, if the servicing official is other than the State Director, who will request the advice of the OGC on pursuing legal action to effect collection. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions. The State Director will tell OGC what assets, if any, are available from which to collect.

§ 1951.709—1951.710 [Reserved]

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.708(b) are met, the servicing options outlined in this section will be considered. Accounts will be serviced according to this section and § 1951.715.

(a) *Determination of unauthorized loan and/or grant assistance amount.*

(1) *Unauthorized loan amount.* The principal loan amount that was unauthorized will be determined. The unauthorized amount will be the unauthorized principal plus any accrued interest on the unauthorized principal at the note interest rate until the date paid in accordance with §1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraphs (b)(1) or (c) of this section.

(2) *Unauthorized grant amount.* The unauthorized grant actually expended will be determined. The unauthorized amount will be the unauthorized grant with accrued interest at the interest rate stipulated in the respective executed grant agreement for default cases until the date paid in accordance with § 1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraphs (b)(2) or (c) of this section.

(b) *Continuation on modified terms.* When the recipient has the legal and financial capabilities, the case will be serviced according to one of the following, as appropriate. In each instance, the servicing official will advise the Finance Office by memorandum of the actions necessary to effect the account adjustment.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to paragraph (a)(1) of this section will be established at the interest rate specified in the outstanding debt instrument or at the present market interest rate, whichever is greater, for the respective community and business program area. The loan will be amortized for a period not to exceed fifteen (15) years, the remaining term of the original loan, or the remaining useful life of the facility whichever is shorter.

(2) *Unauthorized grant.* The unauthorized grant amount determined according to paragraph (a)(2) of this section will be converted to a loan at the market interest rate for the respective Community and Business Programs area in effect on the date the financial assistance was provided, and will be amortized for a period not to exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this obligaton, and the best security position practicable in a manner which will adequately protect the FmHA's interests during the repayment period will be taken as security. When the recipient is to repay grant assistance, the servicing official must maintain records on the "account" as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due and all collections will be remitted with Form FmHA 451–2 to the Finance Office as "Miscellaneous Collections for Application to the General Fund." For cases identified in OIG audits only, the servicing official will report by the 1st of March, June,

September, and December of each year the following information on cases of this type to the State Director: Recipient's name, fund code, audit report number, audit finding number, date of claim, amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance.

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph when legally possible. The interest rate will be adjusted to the appropriate interest rate which was in effect on the date of loan approval or when the recipient was notified according to § 1951.707 of this Subpart, whichever is greater. (see Exhibit C of this Subpart for interest rates (available in any FmHA office).) No retroactive adjustment of interest rate and collection of unauthorized subsidy benefits will be required. Appropriate adjustments will be made to recipient's account to reflect the revised installments. No reversal and reapplication of previous payments will be required.

(c) *Continuation of existing terms.* When the recipient does not have the legal and/or financial capabilities for the options outlined in paragraphs (b)(1), (b)(2), or (b)(3) of this section, as appropriate, to be exercised, the recipient may be allowed to continue to meet the loan/grant obligations outlined in the existing loan/grant instruments. Unless the unauthorized assistance was identified in an OIG audit, no Finance Office notification or action is necessary. If identified by OIG, the servicing official will advise the Finance Office by memorandum of the determination to continue with the recipient on the existing terms of the loan/grant.

(d) *Reporting requirements to National Office.* An annual report will be submitted by the State Office to the Assistant Administrator, Community and Business Programs, within 30 days following the end of the Government's fiscal year for each case of unauthorized assistance or subsidy benefits. The report will include for each case the account name, case number, fund code, OIG audit number (if applicable), amount collected during period, and the balance owed on the unauthorized assistance. Each State Office is responsible for coordinating with the servicing official's office so that this information can be accumulated and consolidated by the State Office within the allotted time. A negative report is required from States which have no unauthorized assistance cases.

§ 1951.712–1951.714 [Reserved]

§ 1951.715 Account adjustments and reporting requirement.

Cases of unauthorized assistance which require Finance Office notification and action, regardless of whether they were identified in an OIG audit or by other means, will be submitted to the Finance Office by memorandum from the servicing official, as provided in applicable paragraphs of § 1951.711 of this Subpart. Each memorandum should include account (borrower) name, case number, audit report number (if applicable), finding number (if applicable), fund code, loan number, and an explanation of the actions to be taken. If the unauthorized assistance was identified in an OIG audit report, the memorandum should be clearly annotated "Audit Claim for OIG Report" as a part of the subject. The explanation should provide sufficient details to allow the Finance Office to properly adjust the account. The State Office will forward a consolidated report on unauthorized grant assistance identified in an OIG audit to the Finance Office by the 15th of March, June, September, and December of each year reflecting the information reported by servicing officials in accordance with § 1951.711(b)(2) for inclusion in the report to OIG.

(a) *Entire loan unauthorized.* When the entire loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, which of the following servicing actions will be taken.

(1) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan in full through refinancing or other available resources, the payment will be remitted with Form FmHA 451–2 and the schedule number will be included in the memorandum.

(2) *Continuation with loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination including an explanation of the terms, if modified.

(b) *Portion of loan unauthorized.* When only a portion of the loan has been determined to be for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, of the servicing actions as follows:

(1) *Repayment in full of unauthorized portion.* If the recipient has arranged to repay the unauthorized portion of the loan through refinancing or other available resources, the remittance will be submitted with Form FmHA 451–2, and the schedule number will be included in the memorandum.

(2) *Continuation with unauthorized portion of loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the unauthorized portion of the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination, including an explanation of the terms if modified. The authorized portion will retain the original loan number with installments adjusted accordingly. Payments previously made will not be reversed and reapplied. The amortized unauthorized amount will be assigned the next available loan number. Installments for the authorized and unauthorized loans will be scheduled and paid concurrently.

(c) *Unauthorized subsidy benefits received.* The unauthorized subsidy benefits received will be serviced according to § 1951.711 (b)(3) or (c).

(d) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, the servicing official will advise the Finance Office, by memorandum, that an unauthorized assistance account is to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(e) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.708(e)(1), will be serviced in accordance with § 1951.708(e)(1)(iii). If the unauthorized assistance was identified through means other than an OIG audit report, the Finance Office will not be notified and no action is necessary.

(f) *Unauthorized grant assistance.* A grant that is to be repaid will be serviced according to § 1951.711(b)(2). If the unauthorized assistance was identified through means other than an OIG audit report and a determination has been made not to recover, the Finance Office will not be notified and no action is necessary.

(g) *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. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(1) For an unauthorized loan account established as provided in paragraphs (a) or (b) of this section, reporting will be as follows:

(i) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(ii) When continuation with the loan on existing or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(2) For unauthorized subsidy cases as provided in paragraph (c) of this section, once the interest rate has been appropriately adjusted, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(3) When an account is established with liquidation action pending as provided in paragraph (d) 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.

(4) When liquidation is not initiated as provided in paragraph (e) of this section, this will be reported on the next scheduled report. No further reporting is required.

(5) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (f) of this section, collections and status will be included in the report to OIG until the amount is paid in full.

§ 1951.716 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests will be 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.

§ 1951.717–1951.749 [Reserved]

§ 1951.750 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 0575–0103.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

9. In § 1955.15, paragraph (d)(15)(i) is revised to read as follows:

§ 1955.15 Foreclosure of loans secured by real estate.

* * * * *

(d) * * *

(15) * * * (i) If a deficiency judgment is obtained in accordance with paragraph (b)(2) of this section, the account will be classified as a judgment case and Form FmHA 1962–20, "Notice of Judgment," will be prepared and distributed according to the FMI. [For MFH cases the District Director should contact the State Office or MFH Unit in the Finance Office for instructions on altering Form 1962–20 to meet the requirements of the Automated Multiple Family Housing Accounting System (AMAS).] The account will be serviced in accordance with Section 1962.49(e) of Subpart A of Part 1962 of this chapter. When action to obtain a deficiency judgment is pending at the time Form FmHA 465–6 (Form FmHA 1965–19 for MFH cases) is sent to the Finance Office, the action will be indicated on the form.

* * * * *

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.49 [Amended]

10. In § 1962.49, paragraph (e)(1), the number of the form entitled "Notice of Judgment" is changed from "Form FmHA 455–20" to "Form FmHA 1962–20."

Authorities: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, Sec. 10, Pub. L. 93–357, 88 Stat. 392, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 32 FR 9850.

Dated: February 22, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, FmHA, Farmers Home Administration.

[FR Doc. 85–7809 Filed 4–1–85; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding loans and grants for Community Facility projects. This action is being taken to eliminate restrictions that could adversely affect certain low income communities. The intended effect of this action is to correct an unforeseen problem created by the September 19, 1984 regulation change. This will allow FmHA to more effectively serve the needs of rural communities participating in FmHA's Community Facility programs.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries; Federal, State, or Local government agencies; or geographic regions. Futhermore, there will be no 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. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to rural communities.

The FmHA programs and projects which are affected by these instructions are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this

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, Public Law 91-190, an Environmental Impact Statement is not required.

The FmHA Administrator, has determined that the action will not have a significant economic impact on a substantial number of small entities because the proposed action will only affect a small number of rural communities.

The Catalog of Federal Domestic Assistance programs affected are No. 10.418, Water and Waste Disposal Systems for Rural Communities, and No. 10.423, Community Facilities Loans.

This action requires no change in recordkeeping or reporting requirements imposed upon the public.

This action amends FmHA's policies for making loans and development grants. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to correct an unforeseen problem created by a previous regulation change and any delay would be contrary to the public interest.

On September 19, 1984, FmHA published a final rule at 49 FR 36827 amending its regulations to use median household income (MHI) in lieu of median family income (MFI) in determining interest rates and amount of grant assistance. This change has resulted in some low income rural communities not being eligible for intermediate interest rate loans and grant assistance in five States and Puerto Rico. In these States and Puerto Rico, 85 percent of the nonmetropolitan median houshold income (NMHI) is below the poverty line prescribed by the Office of Management and Budget for a family of four, as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d). Under current regulations intermediate interest rates and development grants cannot be made to rural communities whose MHI is more than 85 percent of a State's NMHI, but also below the poverty line.

This was not intended to occur as a result of the above regulation change. It was never the intent of FmHA to eliminate intermediate interest rates and grant assistance to rural communities whose MHI is below the poverty line.

To address this problem, FmHA amends Subparts A and H of Part 1942 by authorizing intermediate interest rates and development grants to rural communities whose MHI is more than 85 percent of a State's NMHI but also below the poverty line. This will allow FmHA to continue to provide financial assistance to low income communities in accordance with the objectives of the Administration and Congress.

FmHA amends Subpart A of Part 1942 as follows:

1. Sections 1942.17(c)(2)(iii)(C) (*2*) and (*3*) to clarify the point distribution where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line.

2. Section 1942.17(f)(3) to authorize intermediate interest rates where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line.

FmHA amends Subpart H of Part 1942 as follows:

1. Section 1942.360(a)(14) to change the eligibility for grant assistance. The change will authorize the use of grant funds where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line. Also, to add a definition for "poverty line."

2. Section 1942.363(c)(2)(i) to remove the definition of "poverty line" now in Section 1942.360(a)(14).

3. Section 1942.363(c)(2)(ii) to clarify the use of 1.0 percent of MHI in determining the amount of grant assistance where the MHI of the service area is above the poverty line but not more than 85 percent of the State's NMHI.

4. Section 1942.363(c)(2)(iii) is removed. This paragraph is not needed with the revision to section 1942.360(a)(14).

List of Subjects in 7 CFR Part 1942

Community development, Grant programs—Housing and Community Development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

PART 1942—ASSOCIATIONS

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

Subpart A—Community Facility Loans

1. In § 1942.17, paragraphs (c)(2)(iii)(C) (*2*) and (*3*), and paragraph (f)(3) are revised to read as follows:

§ 1942.17 Community Facilities.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(C) * * *

(*2*) More than the proverty line and less than 85 percent of the State's nonmetropolitan median household income—20 points.

(*3*) More than the poverty line and between 85 percent and 100 percent, inclusive, of the State's nonmetropolitan median household income—15 points.

* * * * *

(f) * * *

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 85 percent of the nonmetropolitan median household income of the State.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

2. Section 1942.360 is amended by revising paragraph (a)(14) to read as follows:

$1942.360 Grant Limitations.

(a) * * *

(14) Pay any costs of a project when the median household income of the service area is above the poverty line and more than 85 percent of the nonmetropolitan median household income of the State. The poverty line will be that income prescribed by the Office of Management and Budget for a family of four, as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

* * * * *

3. Section 1942.363 is amended by removing paragraph (c)(2)(iii) and revising paragraph (c)(2)(i) and paragraph (c)(2)(ii) to read as follows:

§ 1942.363 Determining the need for development grants.

* * * * *

(c) * * *

(2) * * *

(i) *.5 percent* when the median household income of the service area is below the poverty line.

(ii) *1.0 percent* when the median household income of the service area is above the poverty line but not more than 85 percent of the State's nonmetropolitan median household income.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: February 28, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85-7861 Filed 4-1-85; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Exceptions to Notice and Comment Rulemaking Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The final rule amends the Commission's rules of practice by revising Commission rulemaking procedures contained in 10 CFR 2.804 and 2.805 to clarify the Commission's use of the exceptions to notice and comment rulemaking contained in section 4 of the Administrative Procedure Act, 5 U.S.C. 553(b). This clarification is necessary in light of the U.S. Court of Appeals for the District of Columbia decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F. 2d 370 (D.C. Cir. 1983).

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8689.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Court of Appeals for the District of Columbia, in its decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F. 2d 370 (D.C. Cir. 1983) ("*UCS* v. *NRC*"), vacated the Commission's rule of June 30, 1982, which amended operating licenses by removing the deadline for the environmental qualification of electric equipment (47 FR 28363, June 30, 1982). The D.C. Circuit held that by making the rule immediately effective instead of providing for notice and comment, the NRC had among other things, violated Commission regulations. This holding was based on language in 10 CFR 2.804 which the Court read, contrary to the Commission's interpretation, as a requirement for prior notice and opportunity for comment in all Commission rulemakings. The Court concluded that the NRC had divested itself of whatever discretion applicable statutes might allow for dispensing with notice and comment.

In response, the Commission issued a proposed rule to clarify its regulations so as to leave no doubt that the Commission does assert, to the extent allowable, its discretion under Section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), to make exceptions to the general requirements for notice and opportunity for comment in informal rulemaking (49 FR 13043, April 2, 1984). In making this clarification, however, the Commission also noted that the D.C. Circuit in *UCS* v. *NRC* had called into question the extent to which the Commission can lawfully claim discretion to invoke the APA exceptions to notice and comment rulemaking. As an alternative reason for vacating the rule under review, the D.C. Circuit held that the notice and hearing requirements in Section 189a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239a, prevented the Commission from relying on the APA "good cause" exception in the June 30, 1982, rulemaking. In the Commission's view, however, the Court's explanation of this holding left unclear whether the Court saw Section 189a as a general bar to use of the APA "good cause" exception in any NRC rulemaking affecting the activities of licensees, or as a less sweeping restriction that would only apply to rulemakings which specifically amend reactor licenses. Consequently, the Commission moved the D.C. Circuit to vacate this part of its opinion. The Commission noted to the Court that the discussion of the relation between Section 189a and the APA "good cause" exception was unnecessary to the result of the case, raised issues which had not been briefed, was ambiguous in its scope, and could, if read broadly, interfere severely with the Commission's ability to act promptly in the interest of public health and safety. The Court then called for simultaneous briefing by the parties on the availability of the APA "good cause" exception in Commission rulemaking. The Commission filed a brief which maintained that Section 189a does not restrict use of the "good cause" exception. The Union of Concerned Scientists argued that there was a virtually total bar to use of the exception. After receiving this additional briefing, the Court on December 5, 1983 denied without opinion the Commission's motion to amend the decision, offering no further explanation or clarification of its holding, and ordered that its mandate should issue.

In the Supplementary Information to the proposed rule, the Commission noted its view that any reading of Section 189a which interferes with the Commission's ability to take immediate action affecting the activities of NRC licensees, whether by individual order or by rulemaking, when safety requires it, is contrary to the intent of Congress and is an erroneous interpretation of the Atomic Energy Act. A limitation on use of the APA "good cause" exception clearly has the potential for such interference and therefore should be interpreted narrowly.

Under these circumstances, it is reasonable to interpret the court's opinion no broader than the language and the context require. Accordingly, the Commission interprets the language in *UCS* v. *NRC* relevant to the availability of the "good cause" exception to apply only to the rulemaking under review in that case, *i.e.*, amendments of specific reactor licenses requiring prior notice by statute, while leaving unaffected the Commission's authority under the APA to make other kinds of rules effective without prior notice and comment when there is good cause. In response to the D.C. Circuit's opinion in *USC* v. *NRC*, the Commission proposed to include in 10 CFR 2.804 language providing that the APA exceptions to notice and comment rulemaking will apply only where notice and comment are not required by statute.

The proposed rule left intact for the most part the Commission's longstanding and consistent interpretation of its statutory authority and of rulemaking procedures contained in 10 CFR Part 2, Subpart H, that the Commission could avail itself of the exceptions to notice and comment rulemaking contained in the APA for—

- Interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A); or
- When the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

To ensure that the regulation unambiguously reflected the Commission's intentions, the proposed rule amended 10 CFR 2.804 and 2.805 to provide explicitly for Commission

discretion to invoke in appropriate situations the APA exceptions to notice and comment rulemaking cited above, as permitted by law. Under the proposed rule, notice and comment would not be mandatory in Commission rulemaking within the scope of section 553 of the U.S. Code, when they involve interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest.

II. Comments

The Commission received five comments on the proposed rulemaking. Two of these were from the nuclear industry (Yankee Atomic Electric Company, Comment 2; Middle South Services, Comment 4), one from a private citizen (M.L. Lewis, Comment 1), one from a public interest group (Union of Concerned Scientists, Comment 5), and one from a Federal agency (Administrative Conference of the United States, Comment 3).

One of these commenters (M.L. Lewis) expressed the opinion that the proposed rule was an attempt to remove the public's right to comment on a rule before it becomes effective. The proposed rule simply incorporates into the Commission's regulations, the exceptions to notice and comment provided in the APA. These statutory exceptions, generally available to all agencies, are a congressional recognition that in some situations the normal public participation procedures should not be required in advance of taking the action. Public comment, however, will be sought post-promulgation pursuant to new Section 2.804(e) where it is necessary because of public interest in the rule. The Commission's normal practice, in keeping with Section 4 of the APA, is to provide for public participation in Commission rulemakings.

Another commenter, the Administrative Conference of the United States (ACUS), recommended that the final rule provide an opportunity for "post-promulgation" comment whenever the good cause exception of Section 4 of the APA was invoked because prior notice and comment was "impracticable" or "contrary to the public interest." However, such post-promulgation comment need not be provided when the good cause exception was invoked because prior notice and comment are "unnecessary." This corresponds to Administrative Conference Recommendation 83-2, 1 CFR 305. 83-2 (1984). Recommendation 83-2 stated that experience has confirmed the need for a "good cause" exception from the APA's notice and comment requirements. However, a post-promulgation comment opportunity "will give interested persons a chance to expose any errors or oversights that occurred in the formulation of the rule and to present policy arguments for changing the rule." *Id.* at 158. The post-promulgation comment opportunity should not extend to rules for which the agency determines public notice and comment to be "unnecessary" because such rules have been found by the courts to be minor or merely technical amendments in which the public has little interest.

The Commission agrees in principle with the recommendation of the ACUS. Accordingly, the final rule incorporates a new provision, 10 CFR 2.804(e), to provide for post-promulgation comment on rules when the "good cause" exception is invoked when prior notice and comment is "impracticable" or "contrary to the public interest." After receipt of comments, the Commission will publish a statement in the **Federal Register** which provides an evaluation of any significant issues raised by the public comments, as well as any revisions to the rule that have resulted from the staff evaluation of the public comments.

In addition, the ACUS recommended that the Commission should normally use notice and comment when adopting interpretative rules or general policy statements that are likely to have a substantial impact on the public, or at least to provide a post-promulgation comment opportunity if there has been no notice and comment prior to the adoption of such rules or statements. This corresponds to ACUS Recommendation 76-5, 1 CFR 305.76-5 (1984). The Commission normally provides for notice and opportunity for comment on policy statements and interpretative rules, and will continue to do so in the future. In order to retain the flexibility provided by the exception in Section 4 of the APA, the Commission has not adopted the ACUS recommendation completely. The Commission, in 10 CFR 2.804(e), provides for a post-promulgation comment opportunity for interpretative rules or general statements of policy issued without prior notice and comment, except when the Commission finds that post-promulgation comment would "serve no public interest or would be so burdensome as to outweigh any forseeable gain." This latter provision reflects ACUS Recommendation 76-5. *Id.*

A third commenter, the Union of Concerned Scientists (UCS), asserted that Section 189a of the Atomic Energy Act requires the Commission to provide notice and opportunity for comment with respect to *any* rulemaking proceeding dealing with the activities of licensees and consequently prohibits the Commission from restricting the limitation on the use of the APA exceptions to notice and comment rulemaking to rulemakings which amend reactor licenses. Section 189a(1) of the Atomic Energy Act provides, among other things, that:

> In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, *and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees,* and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, *the Commission shall grant a hearing* upon the request of any person whose interest may be affected by the proceeding. (Emphasis added)

UCS argues that this provision constitutes a statutory bar to the use of the APA exceptions from notice and comment rulemaking. These exceptions are normally available, "except when notice or hearing is required by statute." 5 U.S.C. 553(b). According to the commenter, this proposition was affirmed in *UCS* v. *NRC* where the D.C. Circuit held that "[w]hether characterized as a license amendment or a rulemaking, the Commission's action runs afoul of the express terms of Section 189(a) which unequivocally requires notice and opportunity to comment for both types of proceedings." *Supra* at 380. Therefore, the commenter argues, the Commission cannot limit the decision in *UCS* v. *NRC* to the specific type of rule at issue in that case, i.e. rules which specifically amend reactor licenses. Furthermore, the commenter does not believe that the Commission needs the APA "good cause" exception to take immediate action when safety requires it: In support, the commenter cited the Commission's ability to issue an "immediately effective license amendment" when no significant hazards are involved or to issue an "immediately effective order."

In response, the Commission first reiterates its earlier statement that it is reasonable to give the Court's opinion in *UCS* v. *NRC* an interpretation no more restrictive than the language and context appear to require. As noted earlier, the Court's explanation of its holding left unclear whether the Court saw section 189a of the Atomic Energy

Act as a general bar to the use of the APA "good cause" exception in any NRC rulemaking affecting the activities of licensee, or as a less sweeping restriction, which would only apply to rulemakings which specifically amend reactor licenses. The Commission would note that Section 181 of the Atomic Energy Act states that "[t]he provisions of the Administrative Procedure Act . . . shall apply to all agency action taken under this Act," 42 U.S.C. 2231. It is well-established that Commission rulemaking is governed by the APA requirements for informal rulemaking, set out in 5 U.S.C. 533, in which the exceptions to notice and comment appear.[1] Unless the APA exceptions are withdrawn by language elsewhere in the Atomic Energy Act, it should be presumed the Congress intended the exceptions to be available. The Commission does not believe that the language of Section 189a, or any other language in the Atomic Energy Act, compels a finding that Congress intended to deprive the Commission of the rulemaking flexibility permitted by the APA. Nothing in the language of Section 189a or the legislative history specifies that in rulemaking the Commission is to be limited by the constraints of the APA, but denied the opportunity to use the flexibility provided by the APA. The Commission's interpretation of the Atomic Energy Act as not prohibiting the promulgation of a rule without notice and opportunity to comment when APA "good cause" requirements have been met has been consistent and longstanding, and is reflected in Commission practice.[2]

The interpretation on which UCS insists cannot be reconciled with the Nuclear Regulatory Commission's clear responsibility to act swiftly to protect public health and safety when it perceives that a regulated activity presents an undue risk. Under the regulatory framework established by the Atomic Energy Act, the Commission's primary means of responding to hazards is by suspending, revoking, or amending licenses. The notice and hearing requirements for such actions are set out in Section 189a(1) of the Act in the same language that applies to rulemaking dealing with the activities of licensees. Accordingly, if Congress intended the language of Section 189a(1) to be read, as the commentor would read it, as an absolute bar on the Commission's ability to promulgate regulations without delay even when there is good cause for doing so, the same bar apparently would apply to immediate action by the Commission to suspend or revoke licenses in circumstances where delay could have grave consequences. This cannot have been Congress' intention. Even the commentor recognizes that such a restriction would be fundamentally at odds with the Commission's responsibilities.[3] The Commission therefore rejects their interpretation of Section 189[a] as overriding the APA good cause exception and requiring prior notice and comment in all Commission licensing and rulemaking activities, regardless of circumstances.

The language the commenter cites from *UCS* v. *NRC that* "[w]hether characterized as a license amendment or a rulemaking, the Commission's action runs afoul of the express terms of section 189a which unequivocally requires notice and comment for both types of proceedings," *supra* at 380, must be read in the context of the Court's reference to Section 187 of the Atomic Energy Act, 42 U.S.C. 2237. Section 187 explicitly provides that "the terms and conditions of all licenses shall be subject to amendment, revision, or modification, . . . by reason of rules and regulations issued in accordance with the terms of this Act." As the Court noted:

> We express no opinion on the arguments of the parties on the question whether these amendments must be made by adjudication or whether they fall within that category of license amendments that may be made by rule under section 187 of the Atomic Energy Act, 42 U.S.C. § 2237 (1976). That is a matter for the NRC to determine in the first instance on remand. We merely hold here that notice and an opportunity to comment must be provided whatever administrative route is taken. Section 187 provides that "[t]he terms and conditions of all licenses shall be subject to amendment . . . by reason of rules and regulations *issued in accordance with the terms of this chapter* [sic]." 42 U.S.C. § 2237 (emphasis added). Since section 189(a) requires a hearing "in any proceeding for the issuance . . . of rules and regulations dealing with the activities of licensees," id. § 2239(a), a license amendment effected pursuant to section 187 but without notice and comment would not be "issued in accordance with the terms of this chapter." *Id.*

In order to comply with the Court's decision, 10 CFR 2.804 of the final rule provides for prior notice and comment whenever a rulemaking would specifically amend reactor licenses. However, as noted earlier, the Commission believes it is reasonable to give the Court's opinion an interpretation no more restrictive than the language and context requires.

Any reading of Section 189a, which interferes with the Commission's ability to take immediate action affecting the activities of NRC licensees, whether by order or by rulemaking, when safety requires it, is contrary to the intent of Congress. A limitation on use of APA "good cause" exception clearly has the potential to interfere with the Commissions safety responsibilities and therefore should be interpreted narrowly. The existence of the other mechanisms cited by the commenter that would enable the Commission to act quickly in the event of a safety emergency is not a sufficient rationale to deny the Commission the availability of all mechanisms provided by law, such as the use of the APA exceptions to notice and comment rulemaking.

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[1] *See, e.g. Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 (1978).

[2] For example, see the following instances where the Commission has invoked the APA exceptions to notice and comment rulemaking: Amendment to Definition of Production Facility, 26 FR 4989 (June 8, 1961); Siting of Reprocessing Plants and Related Waste Management Facilities, 36 FR 5411 (March 23, 1971); Prohibition of Site Preparation and Related Activities, 37 FR 5745 (March 21, 1972); Exemption for Facilities Processing Irradiated Materials Containing Limited Quantities of Special Nuclear Materials, 39 FR 4871 (February 8, 1974); Application of Certain Cost—Benefit Analysis Requirements of Appendix I to Certain Nuclear Power Plants, 40 FR 40816 (September 4, 1975); Codes and Standards for Nuclear Power Plants, 41 FR 23831 (June 14, 1976); Revocation of Certain Reporting Requirements, 43 FR 49175 (October 25, 1978); Amendment to Definition of Basic Components, 43 FR 48621 (October 10, 1978); Domestic Licensing Proceedings; Modified Adjudicatory Procedures, 44 FR 65050 (November 9, 1979); Packaging of Radioactive Materials for Transport and Transportation of Radioactive Materials Under Certain Conditions, 44 FR 63083 (November 2, 1979); Physical Protection of Irradiated Reactor Fuel in Transit, 44 FR 34466 (June 15, 1979); Emergency Planning and Preparedness for Production and Utilization Facilities, 46 FR 63031 (December 30, 1981); Commission Review Procedures for Power Reactor Construction Permits and Operating Licenses 47 FR 40535 (September 15, 1982); Filing of Copies of Changes to Emergency Plans and Procedures, 47 FR 57670 (December 29, 1982).

[3] The Union of Concerned Scientists states in its comments that the Commission retains authority to take immediate safety action, but apparently believes that language in Section 189a authorizing immediately effective license amendments that involve "no significant hazards consideration" gives the Commission its sole power to act immediately to protect safety. This language was not included in the 1954 statute and did not appear until the 1962 amendments. Thus, UCS's approach implies that prior to 1962 the Commission had no power at all to take immediate safety action affecting licensees and that after 1962, Congress allowed such action only through the device of amending licenses, even if a temporary license suspension would be more appropriate. This approach is contradictory to the emphasis on safety and flexibility apparent throughout the Act, its legislative history, and longstanding Commission practice prior to 1962. A more reasonable approach which the Commission adopts, is that Congress intended from the beginning that the APA exceptions for immediately effective action should be available to the Commission and were not to be overridden by Section 189.

On a separate matter, UCS also objected to a provision currently in 10 CFR 2.804 which allows the Commission to use means of providing notice of proposed rulemaking other than publication in the **Federal Register**. Section 2.804(a) provides that:

> when the Commission proposes to adopt, amend, or repeal a regulation it will cause to be published in the **Federal Register** a notice of proposed rulemaking unless all persons subject to the notice are named and either personally served or otherwise have actual notice in accordance with law.

According to the commenter, Section 189a of the Atomic Energy Act requires the Commission to provide a notice and comment hearing to any person whose interest may be affected by the proceeding. Because this could include all members of the public affected by the proceeding, the commenter argues that it is misleading to suggest that the Commission could avoid **Federal Register** publication by attempting personal service of all affected members of the public. In addition, the commenter asserts that the provision would be illegal if the Commission intends to implement the rule by giving notice only to the licensees governed by particular rules.

This provision is within the permissible scope of 5 U.S.C. 552(a), is not an issue that was addressed in *USC* v. *NRC*, and does not fall within the ambit of this rulemaking. Therefore, this provision is unaffected by this rulemaking and is retained as part of Commission regulations.

Another commenter, (Yankee Atomic) writing in support of the rule, stated that the notice and comment requirements of Section 4 of the Administrative Procedure Act must be followed whenever a Commission rulemaking ". . . changes existing rights and obligations . . ." for licensees. The basis for this statement, and the source of the quoted material, is the decision in *Lewis—Mota* v. *Secretary of Labor*, 469 F.2d 478, 482 (2d. Cir. 1972). In response, the Commission reiterates that any limitations on the use of the APA exceptions from notice and comment inferred from *UCS* v. *NRC* only apply to the kind of rulemaking under review in that case, i.e. rules that specifically amend reactor licenses. Under the final rule, the Commission can avail itself of the APA exemptions, if the requisite criteria are met, for any other rulemakings even if they do affect the "rights and obligation" of licensees. The case cited by the commenter, *Lewis-Mota* v. *Secretary of Labor*, focused on an application of the APA exception from notice and comment rulemaking for *interpretative* rules. The issue in the case was whether the particular rule was a "substantive" rule or an "interpretative" rule. The phrase cited by the commenter was made in the context of determining whether the rule was a "substantive" rule, i.e., whether it "changes existing rights and obligations." In applying the exemptions contained in Section 4 of the APA, the Commission will follow all applicable law, including judicial decisions, in determining whether a rule is an interpretative rule or a substantive rule as a part of its determination concerning what rulemaking procedures are applicable.

Finally, one commenter (Middle South Services), although supporting the rule, recommended that 10 CFR 2.805 be amended to ensure that public participation in Commission rulemaking is of a "timely" fashion. The Commission does not believe that it is necessary to amend Section 2.805 to include the word "timely." Each Commission rulemaking establishes appropriate requirements for timely participation.

III. Final Rule

Section 2.804(d). This section provides for Commission discretion to invoke, in appropriate situations, the APA exceptions to notice and comment rulemaking as permitted by law. Under the final rule, notice and comment would not be mandatory in Commission rulemaking within the scope of section 553 of the U.S. Code, when they involve interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. However, the use of such exceptions is not available when notice and comment are required by statute. The Commission interprets the *UCS* v. *NRC* case as establishing such a limitation on the use of the APA exceptions only for rules which specifically amend reactor licenses. The exceptions to notice and comment will be available for use, in appropriate situations for all other rules, including those that deal with the activities of licensees.

Section 2.804(e). This section provides for post-promulgation comment for all rules issued on the basis of the good cause exception when prior notice and comment was "impracticable" or "contrary to the public interest." Section 2.804(e) will also provide a post-promulgation comment opportunity for policy statements and interpretative rules that are issued without prior notice and comment. However, this opportunity for post-promulgation comment on interpretive rules and policy statement is not required if the Commission finds that such procedures would serve no public interest or would be so burdensome as to outweigh any forseeable gain.

Section 2.804(f). This section provides for a Commission evaluation of all significant issues raised by the comments received under the post-promulgation procedures of § 2.804(e).

Section 2.805(a). This section has been revised to reflect the revisions made to § 2.804.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. It merely clarifies and affirms existing Commission practice on utilizing the statutory exceptions to notice and comment rulemaking contained in Section 4 of the Administrative Procedure Act, 5 U.S.C. 553.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and

reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

Subpart H—Rulemaking

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Sections 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1437 (42 U.S.C. 2135).

2. In § 2.604, paragraph (a) is revised and new paragraphs (d), (e), and (f) are added to read as follows:

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the **Federal Register** a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

. . . . .

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(e) The Commission shall provide for a 30-day post-promulgation comment period for—

(1) Any rule adopted without notice and comment under the good cause exception on paragraph (d)(2) of this section where the basis is that notice and comment is "impracticable" or "contrary to the public interest."

(2) Any interpretative rule, or general statement of policy adopted without notice and comment under paragraph (d)(1) of this section, except for those cases for which the Commission finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(f) For any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the **Federal Register** containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

3. In § 2.805, paragraph (a) is revised to read as follows:

§ 2.805 Participating by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

. . . . .

Dated at Washington, D.C., this 28th day of March 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85–7848 Filed 4–1–85; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 204, 208, and 217

[Docket No. R–0542]

Regulations D, H, and Q; Repurchase Agreement Involving Shares of a Money Market Mutual Fund Whose Portfolio Consists Wholly of United States Treasury and Federal Agency Securities; State Member Bank Purchase of Shares of a Money Market Mutual Fund Whose Portfolio Consists Wholly of Securities That the Bank May Purchase Directly

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board of Governors has issued an interpretation of the definition of deposit in Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q—Interest on Deposits (12 CFR Part 217) to exclude from the definition of the term "deposit" repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and federal agency securities. The Board of Governors has also issued an interpretation to Regulation H—Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208) to permit state member banks to purchase shares in a money market mutual fund whose portfolio consists entirely of assets that the bank may purchase directly.

EFFECTIVE DATE: The reserve computation period beginning June 4, 1985.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Associate General Counsel (202/452–3430), or Elaine M. Boutilier, Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

SUPPLEMENTARY INFORMATION:

List of Subjects

12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting requirements.

12 CFR Part 208

Banks, banking, Federal Reserve System; Reporting requirements, Securities.

12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

Pursuant to its authority under sections 9 and 19 of the Federal Reserve Act (12 U.S.C. 321 *et seq.* and 461 *et*