Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

[Docket No. 0038A]

Crop Insurance Regulations; 1985 Eastern and Western U.S. Apple, Peach, Almond, and Grape and 1986 Arizona-California and Texas Citrus

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Eastern and Western U.S. Apple, Peach, Almond, and Grape, Crop Insurance Regulations, effective for the 1985 crop year only, and the Arizona-California Citrus and Texas Citrus Crop Insurance Regulations effective for the 1986 crop year only by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE:

Effective: September 30, 1985.

Comment: Written comments, data, and opinions on this interim rule must be submitted not later than November 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, August 28, 1985, FCIC published an interim rule in the **Federal Register** at 50 FR 34801 amending the policies for insuring Eastern and Western U.S. Apple, Almond, and Grape Crop Insurance Regulations, by changing the date for filing contract changes to September 30, 1985, effective for the 1985 crop year only and amending the policies for insuring Arizona-California Citrus and Texas Citrus, effective for the 1986 crop year only. Because of the delay in establishing the premium rates or the price elections offered under each crop insurance policy, additional time to include these rates in the Actuarial Tables is needed under the terms and conditions of the 1985 or 1986 policies to insure that the program is actuarially sound.

Section 16 of the policy for each of the crops affected provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the workload involved in making changes on the Actuarial Table for each crop insured in each county where such insurance is offered, it is necessary for FCIC to further extend the date for filing changes to the contract an additional 31 days. It has therefore been determined that the date is further extended to October 31, 1985, effective for the 1985 crop year only (1986 crop year only for Arizona-California and Texas Citrus).

FCIC is still reviewing all the actuarial tables for the regulations referred to herein to determine whether the premium rates or the price elections offered under each crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. This is an annual review conducted on all crops. The amount of work involved is such that these reviews will not be completed prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is further extended.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables by the present contract date of September 30. There is not sufficient time to provide for public comment and implement these changes prior to September 30. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from

September 30, 1985, until October 31, 1985, and made effective for the 1985 crop year only for peaches, apples, grapes, and almonds and for the 1986 crop year only for Arizona-California citrus and Texas citrus.

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC. 20250, during the regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

Crop Insurance, Peach, Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, Almond.

Interim rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peach, Western U.S. Apple, Eastern U.S. Apple, Grape, and Almond Crop Insurance Regulations, effective for the 1985 crop year only and Arizona-California Citrus and Texas Citrus Crop Insurance Regulations, effective for the 1986 crop year only (7 CFR Parts 403, 404, 408, 409, 411, 413, and 439 respectively) in the following instances:

1. The Authority Citation for 7 CFR Parts 403, 404, 408, 409, 411, 413, and 439 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

PART 403—[AMENDED]

2. In 7 CFR § 403.7(d), paragraph 16 to the Crop insurance policy is revised to read as follows:

16. Contract Changes.

We may changes any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by September 30, preceding the cancellation date, except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PARTS 404, 408 AND 439—[AMENDED]

3. In §§ 404.7(d), 408.7(d), and 439.7(d), paragraph 16 to the crop insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 409—[AMENDED]

4. In § 409.7(d), paragraph 16 to the crop insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date for counties with a November 20 or December 10 cancellation date by October 31 preceding the cancellation date for all other counties except that, for the 1986 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 411—[AMENDED]

5. In § 411.7(d), paragraph 16 to the insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date for counties with a November 20 or December 10 cancellation date and by October 31 preceding the cancellation date for all other counties except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 413—[AMENDED]

6. In § 413.7(d), paragraph 16 to the insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1986 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on September 19, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-23191 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Parts 1806, 1863, 1872, 1924, 1944, 1951, 1965, and 1980

Servicing of Real Estate Security for Single Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations regarding servicing of Single Family Housing (SFH) loans secured by real estate. This action is being taken to comply with an overall restructuring of FmHA regulations, and to incorporate the provisions of enacted legislation affecting these regulations. The intended effect of this action is for FmHA to be more responsive to SFH borrowers and to clarify servicing authorities and procedures for field employees.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frances B. Calhoun, Chief, Property Management Branch, Single Family Housing Servicing and Property Management Division, FmHA, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be "nonmajor." This action has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA is removing its regulations on servicing and liquidation of real estate security for SFH loans from Subpart A of Part 1872, and incorporating those regulations into new Subpart C of Part 1965, Chapter XVIII, Title 7, Code of Federal Regulations. In addition, we are amending related regulations to change affected references from Part 1872 to Subpart C of Part 1965.

Discussion of Final Rule

A proposed rule was published in the Federal Register (49 FR 26072) on June 26, 1984. The proposal provided for a 60-day comment period. The comment period ended August 27, 1984. In response to the notice of proposed rulemaking comments were received from FmHA personnel who will be administering the regulation. No comments were received from the public. The proposed rule also covered Subpart A of Part 1965 for servicing security for Farmer Program loans. Subpart A is being finalized along with certain other Farmer Program regulations and will be issued as a final rule at a later date.

Substantive changes to Subpart C of Part 1965 since the proposed rule was published are summarized as follows:

1. A section on servicing real estate taxes is incorporated into this subpart, and the opening paragraph of Subpart E of Part 1863 of this chapter is revised to exclude tax servicing for borrowers who have Single Family Housing loans only. This reflects a policy change wherein taxes can be vouchered by the Government when it is necessary to enable the borrower to become a successful homeowner, although it is before it is legally possible for the borrower to lose title to the security property. This is now § 1965.105; the section that was numbered 1965.105 in the proposed rule is redesignated as § 1965.106. This section provides that when taxes are vouchered, the amount advanced will be charged to the borrower's account as a recoverable cost and amortized over the number of months for which the taxes are being vouchered. Since the taxes accrued over that period of time, it is reasonable to expect repayment over the same length of time. A recent court case indicated that there may have been problems with the previous procedure and has been considered as public comment on the proposed rule.

2. Section 1965.111 on Junior Liens is rewritten to reflect provisions of section 341 of the Garn-St Germain Depository Institutions Act of 1982, specifically, (a) that FmHA consent is not required for a borrower to give a junior lien on the security property, and (b) the creation of a junior lien may not be used as the sole basis for requiring liquidation of the FmHA loan.

3. Section 1965.112 on lease of security property was slightly rewritten for further clarification. The policy in this section also complies with section 341 of the Garn-St Germain Depository Institutions Act of 1982.

4. Section 1965.116 on Deceased Borrowers is also rewritten to reflect provisions of section 341 of the Garn-St Germain Depository Institutions Act of 1982 as it relates to the rights of persons who are relatives, joint tenants, or tenants by the entirety of a deceased borrower.

5. The opening paragraph of § 1965.125 on Liquidation is rewritten to strengthen the Agency's policy on (a) encouraging the borrowers to liquidate voluntarily, (b) requiring that the borrower be advised of the estimated amount of apparent equity, if any, and (c) to increase the time allowed for voluntary liquidation from 60 to 120 days.

6. Section 1965.125(a)(3) is revised to include a real estate broker's commission and points paid by the seller among the items which may be deducted from sale proceeds before payment to FmHA.

7. Section 1965.126(b)(1) is added to clarify (a) the terms on which loans may be assumed and (b) how the loans will be classified after the assumption. Subsequent paragraphs in the section were renumbered accordingly.

8. In § 1965.126, the paragraph entitled "Above-modest property" was retitled to "Suitability of property for retention in program" and rewritten to clarify FmHA's policy on houses which have been improved between the time of the initial loan and the proposed assumption. It also now addresses other situations where FmHA determines the property should not be retained in the program.

9. Section 1965.126(c) on assumptions on eligible terms is slightly rewritten for clarification and paragraph (d) of that section on assumption on ineligible terms is revised to distinguish between the purchaser who intends to use the home as a residence and the investor-type purchaser and provides different repayment terms for each.

10. Subpart M of Part 1951, "Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received" was published as a Final Rule on April 2, 1985, with an effective day of May 2, 1985. Since servicing of accounts under the provisions of Subpart M of Part 1951 can result in an account being substantially delinquent, particularly in the case where unauthorized interest credit was recovered through reversal and reapplication of payments, the Agency has determined the authority to reamortize such an account should be incorporated into Subpart G of Part 1951 when this action will assist the borrower in becoming a successful homeowner.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Housing, Rural areas, Mortgages.

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

PART 1806—INSURANCE

1. The authority citation for Part 1806 is revised to read as follows:

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

Subpart A—Real Property Insurance

2. Section 1806.4(b)(2)(ii) is revised to read as follows:

§ 1806.4 Examining and general servicing of insurance.

* * * * *

(b) * * *

(2) * * *

(ii) In a transfer with assumption, insurance will be required in the same amount and according to the same provisions as for an initial loan of the same type.

* * * * *

3. Sections 1806.5 (c)(1)(ii) and (c)(1)(iii) are revised to read as follows:

§ 1806.5 Losses.

* * * * *

(c) * * *

(1) * * *

(ii) When (A) the essential buildings are not to be repaired or replaced and other suitable buildings are not to be erected, or (B) a balance remains after all repairs, replacements, and other authorized disbursements have been made, such insurance funds will be applied on prior liens, or to current payment to the borrower's loan accounts secured by the real estate or disposed of in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved.

(iii) An insurance payment for loss or damage to a nonessential building the borrower voluntarily insured will be (A) applied on prior lines, or to current delinquencies to FmHA or as an extra payment on the borrower's loan accounts secured by real estate, (B) disposed of as authorized by the State Director in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved, or (C) used for other purposes as authorized by the State Director if the loan is adequately secured and the loan account is current.

* * * * *

4. In § 1806.6 the introductory paragraph of paragraph (a)(1)(vii) is revised to read as follows:

§ 1806.6 Failure of the borrower to provide insurance.

* * * * *

(a) * * *

(1) * * *

(vii) After the County Supervisor and the borrower exhaust all efforts to obtain acceptable insurance, the County Supervisor will request advice from the State Office as to companies issuing acceptable policies in the State and from which the borrower might be able to obtain an acceptable policy. If the borrower still cannot obtain an acceptable policy from any such company, and the determination has been made to continue with the borrower, the County Supervisor will temporarily accept from the borrower the available insurance policy the FmHA determines most nearly conforms to the requirements of § 1806.2 of this subpart.

* * * * *

PART 1863—REAL ESTATE TAX SERVICING

5. The authority citation of Part 1863 is revised to read as follows:

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

6. Section 1863.1 is revised to read as follows:

§ 1863.1 General.

This Part applies to borrowers with a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Labor Housing (LH), and Other Real Estate (ORE) loans secured by real estate. It also applies to section 502 and section 504 Rural Housing borrowers [Single Family Housing (SFH)] who also have a Farmer Program loan. *It does not apply to borrowers who have a SFH loan only;* those will be serviced under § 1965.105 of Subpart C of Part 1965 of this chapter. Borrowers are responsible for paying taxes on the real estate security to the proper taxing authorities before the taxes become delinquent. This obligation is set forth in the security instrument securing the loan.

PART 1872—REAL ESTATE SECURITY

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

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

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

8. Section 1872.1 (a) is revised and reads as follows:

§ 1872.1 General.

(a) *Purpose.* The purpose of this Instruction is to delegate authority and prescribe policies and procedures for servicing and liquidating real estate security for Farmers Home Administration (FmHA) insured Farmer Program loans, including leasehold interests and certain note-only cases. Where borrowers have *both* FmHA Farmer Program and Single Family Housing (SFH) loans, security servicing will be according to this Instruction. However, where borrowers are indebted for SFH loans *only*, security servicing will be according to Subpart C of Part 1965 of this chapter.

* * * * *

9. In § 1872.2, paragraphs (b)(1) and (e) are revised to read as follows:

§ 1872.2 Preservation of security property and protection of liens.

* * * * *

(b) * * *

(1) *Management/maintenance or lease of security.* Services for the management, care, and maintenance of security property will be obtained according to § 1955.55 or security property may be leased according to the provisions of § 1955.66 of Subpart B of Part 1955 of this chapter.

* * * * *

(e) *Abandonment.* When the borrower has removed personal property from the farm or home or the County Supervisor otherwise has reason to believe security property has been abandoned by the borrower, the County Supervisor will make the determinations and take the actions outlined in § 1955.55 of Subpart B of Part 1955 of this chapter to protect the security property.

§ 1872.3 [Amended]

10. In § 1872.3(h), the second sentence which begins with "Form FmHA 440-2," place a period after "land" and delete the remainder of the sentence.

11. In § 1872.18, paragraph (d)(3) is revised to read as follows:

§ 1872.18 Transfer of real estate security.

* * * * *

(d) * * *

(3) *Term—nonfarm.* For RH loans secured by a lien on a nonfarm tract, the balance of the RH debt assumed will be scheduled for repayment in not more than ten years with amortized annual or monthly installments. Interest on the amount assumed will be charged at the Single Family Housing—Ineligible rate in effect when the transfer is approved *or* the interest rate specified in the note being assumed, whichever is greater.

* * * * *

12. In § 1872.18(f), in the second sentence, delete the phrase "other than

sections 502 and 504 RH loans" and the commas on either side of that phrase.

PART 1924—CONSTRUCTION AND REPAIR

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

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

Subpart A—Planning and Performing Construction and Other Development

14. Section 1924.5(g)(4) is revised to read as follows:

§ 1924.5 Planning development work.

* * * * *

(g) * * *

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures contained in Subpart A of Part 1872 of this chapter or Subpart C of Part 1965 of this chapter, as appropriate.

* * * * *

PART 1944—HOUSING

15. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

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

16. Section 1944.10(g)(3) is revised to read as follows:

§ 1944.10 Rural area designation.

* * * * *

(g) * * *

(3) Credit sales and transfers with assumptions may be processed in such areas as authorized in § 1955.103(q) of Subpart C of Part 1955 or § 1965.126 of Subpart C of Part 1965 of this chapter, respectively.

* * * * *

§ 1944.18 [Amended]

17. Section 1944.18(d) is amended in the first sentence by changing the reference from "§ 1872.11 of Part 1872 of this chapter (FmHA Instruction 465.1, Paragraph XI)" to "applicable portions of Subpart C of Part 1965 of this chapter."

18. Section 1944.34(f)(3) is revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(f) * * *

(3) *Transfers.* Interest credit may be granted to a borrower assuming an RH loan provided the assuming party(ies) qualifies according to paragraph (f)(1) of this section.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

19. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

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

20. Section 1951.310 is amended by revising the introductory paragraph and paragraph (a), and reads as follows:

§ 1951.310 Amortization of recoverable cost.

When an advance is made by FmHA to pay recoverable costs, the Finance Office will automatically increase the payments during the amortization period by the amount necessary to repay the advance, with interest computed at the rate which is in effect for the loan to which the advance is charged (the fund code and loan number shown on SF-1034 and Form FmHA 2024-1).

(a) *Monthly payment borrowers.* If there is an outstanding balance from a previous advance when a new advance is made, the two amounts will be combined and reamortized as provided in paragraph (a)(1) or (a)(2) of this section. If the new installment is less than the previous installment, the larger of the two will be used, thus causing the balance to be paid over a shorter period.

(1) *Payment of real estate taxes.* When a borrower's taxes are paid by voucher as authorized in § 1965.105 of Subpart C of Part 1965 of this chapter, the tax advance will bear interest at the rate which is in effect on the loan to which the advance is charged (as specified on SF-1034 and Form FmHA 2024-1). The amortization period of the tax advance will be the number of months for which the taxes are being vouchered and will be stated on the voucher.

(2) *Costs other than real estate taxes.* Advances for costs other than real estate taxes will be automatically amortized for 12 months unless the County Supervisor determines that, based on the borrower's repayment ability, a longer period is needed and so specified on the voucher. An amortization period of more than 12 months will be used only when the cost is of a nonrecurring type.

* * * * *

21. Section 1951.314(a) is amended by adding subparagraph (5) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(5) When an unauthorized loan or unauthorized interest credit has been serviced in accordance with Subpart M of Part 1951 of this chapter, and the reversal and reapplication of payments have resulted in a delinquency which requires more than 2 years for the borrower to repay under Form FmHA 451-37.

* * * * *

22. Section 1951.315 is added and reads as follows:

§ 1951.315 Servicing a note-only loan.

A loan made on a note-only basis will be serviced in a manner which is in the Government's best interest.

(a) *Sale of real property improved with note-only funds.* When property improved with note-only funds is sold, the County Supervisor should attempt to collect the balance owed on the loan. If collection cannot be made, the debt may be assumed by the purchaser of the property on the terms of the note. If collection or assumption cannot be effected, the debt should be settled under Part 1864 of this chapter (FmHA Instruction 456.1), if possible, or reclassified to collection-only if the borrower has assets and a judgment is to be sought.

(b) *Note-only in connection with secured loan(s).* When a borrower owes both secured and RH note-only loans and the security property is transferred to a party who will assume the secured loan(s), the amount to be assumed will be the total of the secured and unsecured loans, not to exceed the market value of the security property. When all of the transferor's debt is not assumed, the balance will be collected, secured by a judgment if there are assets from which collection may be made, or settled under Part 1864 of this chapter (FmHA Instruction 456.1).

(c) *Deceased borrower.* When a note-only borrower dies, the County Supervisor will determine whether there are assets in the borrower's estate from which a claim be collected. If there are assets, a claim against the decedent's estate may be recommended under § 1962.49 of Subpart A of Part 1962 of this chapter. If not, the debt will be settled under Part 1864 of this chapter (FmHA Instruction 456.1).

PART 1965—REAL PROPERTY

23. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart B—Security Servicing for Multiple Housing Loans

24. In § 1965.61, paragraphs (d) and (e)(3) are revised to read as follows:

§ 1965.61 General loan servicing requirements.

* * * * *

(d) *Actions by third parties affecting FmHA security.* Cases including third party action will be handled according to the provisions of § 1965.104(c) of Subpart C of Part 1965 of this chapter, except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs.

(e) * * *

(3) *Mineral leases.* Mineral leases will be handled according to § 1965.113 of Subpart C of Part 1965 of this chapter except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

* * * * *

25. Subpart C is added and reads as follows:

PART 1965—REAL PROPERTY

Subpart C—Security Servicing for Single Family Rural Housing Loans

Sec.

1965.101 Purpose.
1965.102 Policy.
1965.103 Responsibilities.
1965.104 Preservation of security and protection of liens.
1965.105 Servicing real estate taxes.
1965.106 Subordination of FmHA lien.
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Subpart C—Security Servicing for Single Family Rural Housing Loans

§ 1965.101 Purpose.

This subpart prescribes policies and procedures for servicing actions related to real estate which secures Section 502 and Section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Farmers Home Administration (FmHA) for an RH loan(s) *only,* herein referred to as Single Family Housing (SFH) loan(s). Security servicing for RH loans when the borrower is also indebted to FmHA for Farmer Programs loans is under Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

§ 1965.102 Policy.

Real estate security is servicing under provisions of the security instruments and related agreements, including authorized modifications, in a manner which will assist the borrower in accomplishing the loan objectives and protect the Government's financial interest.

§ 1965.103 Responsibilities.

(a) *Borrower.* The borrower is responsible for:

(1) Making loan payments as agreed;

(2) Paying real estate taxes and/or assessments when due;

(3) Keeping adequate property insurance in force; and

(4) Maintaining the property in good repair.

(b) *FmHA officials.* In this subpart, "County Supervisor" includes an Assistant County Supervisor, GS–7 or above, who has written delegated authority to carry out provisions of this subpart; and "District Director" includes an Assistant District Director or District Loan Specialist who has written delegated authority to carry out the provisions of this subpart. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories. Servicing actions will be documented in the running record of the case file. The County Supervisor is authorized to execute, on behalf of the Government, all forms and other documents necessary to complete transactions under this subpart after the transaction has been approved by the approving official.

(1) The County Supervisor is responsible for servicing the loan account under Subpart G of Part 1951 of this chapter, for seeing that the security property is properly maintained, and for taking appropriate action promptly when necessary to protect the Government's interest.

(2) The District Director will assist in unusual cases or when the County Supervisor requests assistance in servicing any case.

(3) The State Director will obtain legal advice from the Regional Attorney, Office of the General Counsel (OGC), as necessary on an individual-case basis or in issuing a State Supplement where specifically authorized.

§ 1965.104 Preservation of security and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect real estate security as necessary to protect the Government's interest.

(b) *Actions by FmHA for account of borrower.* When necessary to protect the interest of the Government, FmHA may make protective advances for purposes outlined in paragraphs (b)(1) through (b)(4) of this section. Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," Form FmHA 2024–11, "Solicitation, Quotation, Purchase Order, Inspection, and Invoice," or other approved voucher, and Form FmHA 2024–1, "Miscellaneous Payment System," must be prepared and submitted according to the Forms Manual Insert (FMI) for payment to be charged to the borrower's account as recoverable costs.

(1) *Taxes and/or assessments.* Real estate taxes and assessments will be handled under § 1965.105 of this subpart.

(2) *Insurance.* Property insurance will be handled under Subparts A and B of Part 1806 of this chapter (FmHA Instructions, 426.1 and 426.2), if applicable.

(3) *Maintenance.* When the borrower continues to occupy the security property but is not adequately maintaining it, prior authorization from the National Office must be obtained before funds are advanced for essential repairs. The State Director will submit the facts and reasons why the loan should not be liquidated to the Assistant Administrator, Housing. If there is a prior lien, expenditures for maintenance will not be made by the Government unless the prior lienholder refuses to make them. Evidence of the prior lienholder's refusal to make these expenditures must be fully documented.

(4) *Abandonment.* When the County Supervisor believes the borrower has abandoned security property, actions

will be taken without delay under Subpart B of Part 1955 of this chapter.

(c) *Actions by third parties which affect security property.* When a third party brings suit or takes any other action which affects FmHA security property, borrowers are expected to protect their own interests in the property. Examples of these actions are: condemnation proceedings, trespass suits, and actions to quiet title. When the County Supervisor learns of a third-party action which may jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will send the case file, complete with information concerning the action, and recommendations for FmHA servicing actions to the State Director. A copy of the petition or complaint, as soon as available; the account status; a current appraisal; the name and address of the borrower's attorney, if any; and any other information the County Supervisor believes important will be included. The State Director will consult OGC about all such lawsuits. The State Director will also consult OGC about other third-party actions when legal advice is needed. Protective advances will be authorized only to protect the Government's interest. When foreclosure or other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan in accordance with Subpart A of Part 1944 of this chapter provided the third party agrees to postpone further action pending the processing of a subsequent loan. The State Director will advise the County Supervisor of the actions to be taken to protect the Government's interest.

(1) *Prior lien foreclosure.* When FmHA learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness, the estimated costs of the foreclosure sale, and whether or not SF-1034 would be accepted if the Government were the successful bidder at the sale.

(i) *Paying the prior lien debt.* When it is advantageous to the Government to pay the prior lienholder in full before the foreclosure sale, title evidence must be obtained. Information clearly supporting the action as being to the Government's financial advantage must be documented in the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery on the secured debt than it could by bidding at the foreclosure sale; and

(B) The FmHA account, after payment of the prior lien, will be liquidated.

(ii) *Bidding at prior lien foreclosure sale.* When acceptable title evidence has been obtained and it is determined that a net recovery on the Government's investment can be made by acquiring the property, the State Director may authorize bidding at the foreclosure sale. Calculation of the bid amount, designation of bidder and reporting of sale will be under the portion of Subpart A of Part 1955 of this chapter concerning foreclosure. If payment by voucher is not acceptable, SF-1034 and Form FmHA 2024-1 must be prepared and submitted according to the FMI in time to receive a check before the sale date.

(2) *Junior lien foreclosure.* FmHA will not bid at a junior lien foreclosure sale unless OGC advises that not bidding would likely result in FmHA's lien being extinguished. When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser if the requirements of § 1965.126 (c) or (d) of this subpart can be met; otherwise the FmHA loan will be liquidated.

(3) *Tax sale.*—(i) *Authority.* The State Director may authorize bidding at a tax sale it it is determined to be in the best financial interest of the Government and all of the following conditions exist:

(A) OGC has advised that under applicable State law the tax sale will not extinguish the FmHA lien in case another party is the successful bidder at the tax sale or the borrower redeems the property before the tax deed is delivered.

(B) Under applicable State law the purchaser will be able to obtain a deed to the property sooner than foreclosure could be completed.

(C) Taxes which will accrue during the time that foreclosure is expected to take will create or increase a loss to the Government.

(ii) *Limitations.* (A) When all of the conditions outlined in paragraph (c)(3)(i) of this section are met and the taxing authority schedules the security property to be sold for delinquent taxes (which are a prior lien), the State Director may designate an FmHA employee to bid at the tax sale provided a title search covering the period since the last title opinion in the file reveals no liens which cannot be settled in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter.

(B) When all of the conditions outlined in paragraph (c)(3)(i) of this section are *not* met, FmHA will pay the taxes to protect the Government's security interest as provided in § 1965.105 of this subpart. When taxes are paid by FmHA under these circumstances, the case will be considered a problem case and a decision made on whether liquidation will be required.

(iii) *Bid.* The gross investment will be determined under the portion of Subpart A of Part 1955 of this chapter concerning foreclosure. The State Director will designate, in writing, an employee to bid at the tax sale. The designation will specify that incremental bidding will be used starting at the lowest level possible and that the maximum bid will not exceed the gross investment or the market value of the security property (less other liens which must be settled), whichever is less (stated in dollar amount).

(iv) *Credit to borrower.* When title to SFH security property is acquired by tax deed, the borrower's account will be credited as though the acquisition had been through foreclosure by FmHA under Subpart A of Part 1955 of this chapter.

(v) *State Supplement.* The State Director, with the assistance of OGC, will issue a State Supplement to this section setting forth the applicable provisions of State law and giving specific guidance pertinent to the particular state.

(4) *Bankruptcy sale.* With prior advice from OGC, the State Director may authorize bidding at a bankruptcy sale provided title to the security property can be acquired free of liens other than FmHA's lien(s). Bidding and credit to the borrower's account will be the same as outlined in paragraph (c)(3) (iii) and (iv) of this section.

§ 1965.105 Servicing real estate taxes.

In this section, "taxes" includes assessments which, if not paid, will become a lien on the property. Security instruments for FmHA loans provide that the borrower will pay real estate taxes as they become due, and failure to do so is a default of that loan covenant. In credit counseling or assisting the borrower in budgeting or other financial planning, payment of taxes must be included.

(a) *Responsibility.* The County Supervisor is responsible for determining which borrowers have not paid their taxes.

(b) *Decision on servicing.* Upon determining a borrower has not paid taxes when due, the County Supervisor will make a diligent effort to have the borrower pay the taxes. If the borrower is unable to pay the taxes, the County Supervisor will take one of the following actions:

(1) Based on a realistic budget, if it is determined the borrower can likely be successful if FmHA vouchers the taxes, the voucher will be processed according to paragraph (e) of this section. At the same time, an agreement should be reached as to the amount the borrower must set aside to pay the current year's taxes when due as well as make the increased payments to repay the tax advance. Advances for taxes for more than two consecutive years must have the prior concurrence of the District Director.

(2) If the borrower does not respond and cooperate with FmHA; if it cannot be projected through a budget that vouchering taxes will likely enable the borrower to be successful; or if the taxes are so low that the amount will not have a critical bearing on the success of the borrower, FmHA will not pay the taxes by voucher. If a taxing authority schedules a tax sale and the conditions outlined in § 1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met, FmHA will bid at the tax sale. If those conditions are not met, FmHA will pay the taxes to protect the Government's security interest. When taxes are paid by FmHA under these circumstances, the case will be considered a problem case and a decision made on whether liquidation will be required.

(c) *Foreclosure-pending cases.* When foreclosure action is pending, taxes will not be vouchered until the date for the public sale is set and taxes due up to the sale date can be paid at one time unless the taxing authority schedules a tax sale sooner. If a tax sale is scheduled and the conditions of §1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met, FmHA may bid at the tax sale; or the taxes will be paid by voucher and foreclosure action continued.

(d) *Other Real Estate (ORE) cases.* As used in this subpart, ORE refers only to ORE loans for SFH property. ORE loans include credit sales from inventory on ineligible terms; assumptions of loans on ineligible terms; and loans which have been rescheduled through an accelerated repayment agreement in accordance with § 1965.125(a)(4) of this subpart. FmHA will not voucher taxes of ORE borrowers except to protect the Government's security interest. If a tax sale is scheduled, FmHA may bid at the tax sale if the conditions outlined in § 1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met. If those conditions are not met, the taxes will be vouchered and subsequent servicing actions which are in the Government's best financial interest will be taken.

(e) *Processing tax advances.* When a borrower's taxes are to be paid by FmHA, Standard Form 1034, and Form FmHA 2024-1, will be prepared and submitted for payment under FmHA Instruction 2024-P, (available in any FmHA office) and the FMIs as a recoverable cost. The following provisions apply:

(1) Vouchers will be prepared to request that the check be made payable to the taxing authority but mailed to the County Supervisor. The County Supervisor is responsible for delivery of the check to the taxing authority and for obtaining a receipt.

(2) A tax advance will bear interest at the rate which is in effect on the loan to which the advance is charged (as specified on SF-1034 and Form FmHA 2024-1). When a borrower has more than one loan secured by the real estate on which taxes are being paid, the advance will be charged to the initial loan or the lowest loan number within the fund code that is still outstanding. The amortization period of the tax advance will be the number of months for which the taxes are being vouchered.

§ 1965.106 Subordination of FmHA lien.

(a) *Conditions for subordination.* Subordination of FmHA's lien to another lender may be granted subject to the following provisions:

(1) The funds obtained from the other lender will be used only for purposes for which an RH loan could be made and subject to the same limitations applicable to RH loan funds.

(2) The prior lien debt plus the FmHA debt will not exceed the market value of the security. (For this purpose, the FmHA debt is the unpaid balance on the loan exclusive of recapture of subsidy.)

(3) The prior lien debt must be on terms and conditions which the borrower can reasonably be expected to meet without jeopardizing repayment of the FmHA indebtedness.

(4) Proposed development, if any, will be planned and performed in accordance with Subpart A of Part 1924 of this chapter or directed by the other lender in a manner which is consistent with that subpart.

(5) The funds obtained from the other lender for development will be handled through a supervised bank account or under other arrangements approved by the County Supervisor which will assure that the funds are used for the planned purposes.

(6) An agreement must be obtained in writing from the prior lienholder providing that at least 30 days advance notice will be given to FmHA before action to foreclose on their prior lien is initiated.

(b) *Approval authority.* An approval official may approve a subordination when the total indebtedness against the security including prior-lien debt(s) does not exceed his/her respective loan approval authority.

(c) *Request for subordination and processing.* When a borrower requests FmHA to subordinate its lien, Form FmHA 465-1, "Application for Partial Release, Subordination, or Consent," will be prepared. A new appraisal will be made when the latest appraisal report is more than one year old or if it does not reflect market value. When development work is planned, a new appraisal is required to reflect the development. The subordination will be completed according to a State Supplement approved by OGC.

§ 1965.107-1965.109 [Reserved]

§ 1965.110 Release of security.

(a) *Release or partial release.* FmHA may consent to transactions affecting the security, such as sale or exchange of security or granting of a right-of-way across the security, and grant a release or partial release provided:

(1) The consideration is:

(i) In sale of property, cash in an amount equal to the value of the security being disposed of or rights granted;

(ii) In exchange of property, another parcel of property acquired in exchange with value equal to or greater than that being disposed of; or

(iii) In granting an easement or right-of-way, benefits derived which are equal to or greater than the value of the property being disposed of.

(2) The security after the transaction is completed will be an adequate but modest, decent, safe, and sanitary dwelling and related facilities.

(3) Repayment of the FmHA debt will not be jeopardized.

(b) *Approval authority.* An official who has loan approval authority may approve release or partial release transactions when the total indebtedness against the security does not exceed his/her respective loan approval authority.

(c) *Request for consent and processing.* When a borrower requests consent to sell or other disposition of a portion of the security, Form FmHA 465-1 will be prepared. If exchange of all or part of the security is involved, title clearance on the proposed new security and a new security instrument will be obtained in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) before release of existing security. A new appraisal will be made when the latest appraisal is more than one year old or if it does not reflect market value. When a new appraisal is required, it will be based on the property being retained with a notation on the value of the portion to be released entered on Form FmHA 1922-8, "Residential Appraisal Report," in the "Comments" section of the same appraisal report. Form FmHA 460-1, "Partial Release," or other form approved by OGC, will be used to release a portion of the security. When all or a portion of the security is being exchanged, OGC will be requested to provide a form of release without satisfaction of debt, and the release may be recorded simultaneously with the new security instrument. In sale of all or a portion of the security when full payment is received in the form of cash, money order, certified check, or Cashier's check, the release may be delivered.

(d) *Use of proceeds.* Proceeds from sale of a portion of the security granting of an easement or right-of-way, damage compensation, and all similar transactions requiring FmHA consent, will be used in the following order:

(1) To pay customary and reasonable costs (as determined by FmHA) related to the transaction which must be paid by the borrower, such as real estate taxes which must be paid to conclude the transaction; cost of title examination, survey, abstract, and reasonable attorney's fees; costs necessary to determine a reasonable price, such as appraisal of minerals, when the necessary appraisal cannot be obtained without cost; and additional income tax the borrower will be required to pay;

(2) To be applied on a prior lien debt, if any; and

(3) To be applied to the FmHA indebtedness as an extra payment or used for improvements to the security property in keeping with purposes and subject to limitations applicable to use of RH loan funds. Proposed development will be planned and performed in accordance with Subpart A of Part 1924 of this chapter and the proceeds handled through a supervised bank account to assure that the proceeds are used as planned.

§ 1965.111 Junior liens.

Within the scope of credit counseling, SFH borrowers will generally be discouraged from giving junior liens on real estate which secures their SFH debt. However, FmHA consent is not required and the existence of a junior lien may not be treated as a default or used as justification for forced liquidation action. When junior liens exist, the FmHA loan will be serviced in the usual manner as long as the borrower makes payments as scheduled, properly maintains the security, and meets other loan conditions. The existence of a junior lien will not prevent liquidation action if the borrower is in default. Should FmHA be approached by an existing or potential junior lienholder as to the amount of FmHA's debt, the unpaid balance on the FmHA loan for this purpose will be stated as the *sum* of unpaid principal and interest and, if the loan is subject to recapture of subsidy, total subsidy granted and principal reduction attributed to subsidy. The County Supervisor may consent to a junior lien and enter into an agreement to notify the junior lienholder in the event FmHA initiates foreclosure only when:

(a) The proposed loan is for purposes for which FmHA RH loan funds could be used or for business purposes to enhance earning capacity;

(b) Repayment of the FmHA loan will not be jeopardized; and

(c) The total debt against the security will not exceed its market value.

§ 1965.112 Lease of security property.

(a) When the County Supervisor is aware a borrower has leased or proposes to lease security property, the borrower will be informed in writing of the limitations on leasing outlined in subparagraphs (1), (2), and (3) of this paragraph. The borrower will be requested to furnish FmHA a copy of the lease or proposed lease. FmHA consent to lease is not required, and if the County Supervisor is unable to obtain a copy of the lease or is advised by the borrower a written lease does not exist, no further action is required by the County Supervisor and no action to initiate liquidation will be taken unless the borrower:

(1) Has entered into a lease for a term of more than 3 years;

(2) Has entered into a lease for any term containing an option to purchase; or

(3) Is in default of one or more of the following loan obligations:

(i) Keeping the account current.

(ii) Adequately maintaining the property.

(iii) Keeping the property insured.

(iv) Paying real estate taxes when due.

(b) If a borrower leases or proposes to lease security property for a term of more than 3 years, or with an option to purchase, FmHA should normally initiate liquidation action, preferably voluntary. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Housing, is required. The State Director should forward such a request along with a justification to the National Office.

§ 1965.113 Mineral leases.

(a) *Authority.* When a borrower requests consent to lease the mineral rights to security property, the County Supervisor may consent provided the proposed use of the leased rights will not result in the property being made unsuitable as a nonfarm residence and the Government's security interest is not adversely affected.

(b) *Income from lease of mineral rights.* (1) The basic rental proceeds from lease of mineral rights will be treated as income.

(2) If the proposed activity is such that it will decrease the security value of the property (such as oil drilling or quarrying), consent may be given only if the borrower assigns the income from the lease (both damage compensation and royalty payments) to FmHA to be applied to the FmHA loan(s) as extra payments.

(3) If the proposed activity is not likely to decrease the security value of the property, damage compensation must be used to repair the damage or assigned to FmHA for application on the FmHA loan(s) as an extra payment; and royalty payments will be treated as income.

(c) *Processing.* Form FmHA 465-1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on value. Assignment of income will be taken by use of Form FmHA 443-16, "Assignment of Income from Real Estate Security," or other from approved by OGC which is necessary to comply with State law.

§ 1965.114-1965.115 [Reserved]

§ 1965.116 Deceased borrower.

When an SFH borrower dies, servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section. The case file containing completed Form FmHA 455-17, "Report On Deceased Borrower," will be submitted to the State Director only when the FmHA debt is inadequately secured and the estate has other assets from which collection could likely be made or the County Supervisor needs advice on servicing the case. When arrangements cannot be effected for continuation of the loan under any of the provisions of this section, the loan may be liquidated according to § 1965.125 of this subpart. In the event a person(s) decides to make loan payments under the provisions of paragraph (b) or (d) of this section without obtaining full title to the property, the County Supervisor will notify the person(s) making the payments, in writing, of the risks involved (such as possible loss of equity to other heirs or dispossession by other heirs) and suggest that legal advice be obtained.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will continue occupying the dwelling and repaying the loan, no action will be taken except to notify the Finance Office by use of Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," to place the account in the name of the surviving borrower if the account is not already in that name. An assumption agreement will not be used.

(b) *Continue with relative, joint tenant, or tenant by the entirety.* When a relative, joint tenant, or tenant by the entirety who inherits title to (or an interest in) the security property by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured. Assumption of the indebtedness is not required, and occupancy of the dwelling is subject only to the restrictions on leasing outlined in § 1965.112 of this subpart. Interest credit, however, may be granted only to a *borrower* (obligor by virtue of a note or assumption agreement); therefore, interest credit may be granted only when at least one obligor is occupying the dwelling except as provided in § 1965.126(c)(2)(ii) of this subpart. The loan remains subject to graduation requirements set forth in Subpart F of Part 1951 of this chapter. Continuation with a relative, joint tenant, or tenant by the entirety under the provisions of this paragraph applies only to the transfer of title resulting from the death of the borrower; it *does not* apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritor(s). Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1965.126 of this subpart.

(c) *Assumption by spouse not liable for the FmHA debt.* The spouse of a deceased borrower who is not liable for the FmHA debt and who wishes to assume the loan may do so in accordance with § 1965.126(c)(2)(i) of this subpart.

(d) *Assumption by person, other than the spouse, who is not liable for the FmHA debt.* A person other than the deceased borrower's spouse who wishes to assme the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1965.126(c)(2)(ii) of this subpart provided:

(1) The dwelling will continue to be occupied by one or more persons who were dependent of the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other loan conditions will be met such as payment of taxes, insurance, maintenance, and assessments.

§ 1965.117 Bankruptcy.

The section applies to SFH borrowers who declare bankruptcy under Chapter 7 (liquidation) or Chapter 13 (adjustment of debts of an individual with regular income) of the Federal Bankruptcy Code. SFH borrowers who declare bankruptcy under Chapter 11 (reorganization) will be handled on a case-by-case basis under a State Supplement or as advised by OGC.

(a) *Meetings and hearings.* It is normally not necessary that FmHA be represented at meetings and hearings during bankruptcy proceedings. If, however, the Reigional Attorney advises that FmHA attend a meeting or hearing, the State Director will appoint an FmHA representative.

(b) *Initial notification of bankruptcy.* When an Order of First Meeting of Creditors is received or the County Supervisor is otherwise informed that a borrower has filed a petition in bankruptcy, the County Supervisor shall:

(1) Continue to accept and remit payments made voluntarily by the borrower, but discontinue collection efforts.

(2) Flag the office management card to indicate that the borrower is in bankruptcy.

(3) Request a statement of account from the Finance Office if a Proof of Claim will be filed.

(4) Determine whether or not FmHA wishes to continue with the borrower and advise the State Director. If the decision is to continue, the actions outlined in paragraph (d)(l) of this section will be taken.

(5) Refer the case to the State Director who will consult OGC for advice. Form FmHA 1965-14, "Proof of Claim," or other form approved by OGC, is required in all Chapter 13 cases unless the Order of First Meeting of Creditors specifically states that a proof of claim is not required. Proofs of claim will be sent to OGC for filing. A proof of claim need not be filed in no-asset Chapter 7 cases, but otherwise it should be filed even if FmHA does not wish to continue with the borrower. The Order of First Meeting of Creditors and a copy of the proof of claim will be placed in the borrower's case file. A proof of claim must be filed within 90 days after the date set for the first meeting of creditors, unless the Bankruptcy Court has granted an extension. The proof of claim will set forth the amount of unpaid principal and interest, as well as principal reduction attributed to subsidy and the total amount of interest credit granted if the loan is subject to recapture. The proof of claim will cover all indebtedness to FmHA except judgments obtained by a U.S. Attorney and will indicate whether the indebtedness is secured or unsecured.

(c) *Continuation in Chapter 13 cases.* FmHA must continue with a borrower covered under a confirmed Chapter 13 plan while the plan is in effect. Prior to confirmation of the plan, the State Director or his/her delegate through OGC will contact the Trustee and request that the plan provide that all payments to FmHA, whether paid through the Trustee or directly to FmHA, will be made through the County Office. If a borrower defaults in payments during the plan, OGC may be requested to petition for relief from the automatic stay if liquidation of the loan is recommended. Upon completion of the Chapter 13 plan, the borrower will not be discharged from the FmHA debt if the final due date on the loan is after expiration of the plan.

(d) *Continuation in Chapter 7 cases.* (1) If a decision is made to continue with the borrower, Form FmHA 460-10, "New Promise to Pay," or other form approved by OGC, will be completed and, with the advice of OGC, forwarded to the borrower or the borrower's attorney with instructions to execute prior to discharge and present the executed Form FmHA 460-10 to the Bankruptcy Court in accordance with section 524(d) of the Bankruptcy Code. The borrower's attorney should be advised to return the fully executed Form FmHA 460-10 to the County Supervisor after the Bankruptcy Court has granted the borrower's discharge and the reaffirmation hearing has been held. The New Promise to Pay should be executed prior to the borrower's discharge even if the Bankruptcy Court has previously advised that it will not review Form FmHA 460-10.

(2) If Form FmHA 460-10 is not executed prior to discharge, a letter in the form of Exhibit A (available in any FmHA office) of this subpart (with changes approved by OGC) will be sent to the borrower after discharge. This letter will advise the borrower that FmHA acknowledges that he/she is not personally liable for the debt; the security property will be the only source to which FmHA may look for recovery of the debt, and in the event of foreclosure, FmHA will be barred from seeking a deficiency judgment. The Letter will also indicated that as long as the scheduled payments are made and all other covenants contained in the promissory note(s) and security instrument(s) are complied with, FmHA will not foreclose, but will continue servicing the loan in accordance with this subpart and Subpart G of Part 1951 of this chapter.

(e) *Not continuing with borrower.* If a decision is made not to continue with a secured loan, liquidation action, either voluntary or foreclosure, may be initiated as soon as one of the following has occurred:

(1) The bankruptcy case is dismissed or closed.

(2) An order lifting the automatic stay is received. This may be in connection with an order of abandonment or a separate order; however, an order of abandonment without specific language that the automatic stay is removed *does not* permit liquidation to be initiated. To petition for relief from the automatic stay, the State Director will forward a request to OGC along with the borrower's case file including a current appraisal and the account status.

(3) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(f) *Servicing prior to discharge or during a Chapter 13 plan.* A petition filed under Chapter 7 or 13 of the Bankruptcy Code operates as an automatic stay. This stay prohibits all collection efforts and foreclosure actions. The receipt of voluntary payments, granting of interest credit and moratoriums, and collection letters for a borrower under a confirmed Chapter 13 plan that are sent to the Trustee, however, are allowed. Any other servicing actions may not be initiated or approved without the prior consent of OGC.

(g) *Servicing discharged borrowers.* Discharge under Chapter 7 of the Bankruptcy Code operates as an injunction against any act to collect a debt which implies personal liability of the debtor. Chapter 13 debtors' discharges will not include the FmHA debt if the final due date is after expiration of the plan. For borrowers who have received discharges under Chapter 7, normal servicing procedures may be followed after the discharge provided the borrower has received the letter specified in paragraph (d)(2) of this section or properly executed Form FmHA 460-10. For borrowers who filed under Chapter 13, normal servicing may be resumed when the confirmed plan has expired or been terminated. After discharge of an *unsecured* debt (for example, a note-only loan), the State Director will request the Finance Office to cancel the account balance. This will be done by memorandum with copy of the Order of Discharge attached.

§ 1965.118 Release of FmHA lien without monetary consideration.

FmHA liens may be released without monetary consideration as follows:

(a) *Additional security.* The State Director may approve and authorize the release from FmHA's lien real estate which was taken as additional security before the loan is repaid provided the market value of the remaining security is clearly adequate to secure the loan balance. Property considered as "additional security" may not be any part of the tract bought with RH loan funds or part of the minimum-adequate site on which the dwelling is located.

(b) *Mutual mistake.* The State Director may approve and authorize the release of property included in the FmHA security instrument through mutual mistake when substantiated by facts and when he/she can determine with the advice of OGC that a mutual error existed at the time the property was included in the security instrument.

(c) *Valueless lien.* The State Director may approve and authorize release of an FmHA lien which is determined to have no present or prospective value or when enforcement would be ineffectual or uneconomical. This does not include judgment liens or statutory redemption rights except with the consent of OGC. When recommending release of an FmHA lien as valueless, the County Supervisor will forward to the State Director the case file and the following:

(1) Current appraisal report reflecting market value of the property;

(2) The name(s) of prior lienholder(s) and the amount secured by each lien which is prior to FmHA;

(3) Amount of real estate taxes and/or assessments which are or will become a prior lien on the property; and

(4) Facts which substantiate that the lien is valueless.

§§ 1965.119-1965.124 [Reserved]

§ 1965.125 Liquidation.

(a) *Voluntary liquidation.*—(1) *Agreement.* When it is determined the borrower cannot or will not successfully achieve the loan objectives, the County Supervisor will attempt to have the borrower liquidate voluntarily. The exception is: A borrower who has bankruptcy proceedings pending should not be requested to liquidate voluntarily until one of the situations outlined in § 1965.117(e) of this subpart exists. If it appears the borrower has equity in the property, the County Supervisor will advise the borrower of the estimated market value and the approximate amount of equity. The borrower will be encouraged to sell the property, paying FmHA in full and realizing the equity. After reaching agreement for voluntary liquidation, the County Supervisor may allow the borrower 120 days to sell the property or otherwise arrange to pay FmHA in full, after which voluntary conveyance should be considered unless a transaction is pending which will likely result in paying the loan in full. At the borrower's request, an extension of time may be allowed to complete a transaction provided:

(i) The property is listed with a real estate broker for not more than the market value as determined by FmHA;

(ii) A sales contract has been entered into and assumption of the FmHA loan, or a loan from another lender, is pending; or

(iii) The borrower has applied to a lender for a long-term loan to pay FmHA in full.

(2) *Consent to sale for less than the FmHA debt.* If a borrower proposes to sell or transfer the property for an amount less than the FmHA debt (and prior lien(s), if any), the County Supervisor will appraise the property and may consent to the sale if the proposed sale price is not less than the market value. When consent under this paragraph is given and payment in an amount at least equal to the market value of the security property (less prior liens if paid separately and/or allowable costs authorized in paragraph (a)(3) of this section is received by FmHA in cash, money order, certified check, or Cashier's Check, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with State law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full. Release of the borrower from liability

for the deficiency is covered in § 1965.127(b) of this subpart.

(3) *Distribution of proceeds.* If the FmHA debt will not be paid in full, the entire sale proceeds must be applied to the FmHA debt (and prior lien(s), if any), minus costs which the seller customarily or legally must pay in order the convey title; a real estate broker's commission, and no more than 3 points to enable the buyer to obtain credit from another lender. Points will not be paid to reduce the interest rate. The allowable costs may include real estate taxes, preparation of the deed, abstract fees, and deed or other revenue stamps. A real estate commission allowed under this subparagraph must not exceed the prevailing rate for sale of similar property in the area.

(4) *Accelerated repayment agreement.* If liquidation is necessary for reasons other than failure to graduate to other credit, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. When this type agreement has been reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be prepared and executed according to the FMI. Forms FmHA 1965–22, "Information on Assumption on New Terms or Other Change of Terms," and 1965–23, "Supplemental Information on Assumption and/or Change of Terms" will be prepared and distributed according to the FMIs. Accounts rescheduled by means of Form FmHA 1965–11 will be reclassified to "Other Real Estate (ORE)" loans. The term for the rescheduled payments may not exceed 10 years or the final due date of the note being rescheduled, whichever is sooner. The interest rate will be the SFH-Ineligible rate in effect on the date the agreement is executed or the note rate, whichever is greater.

(b) *Forced liquidation.* If the borrower will not agree to voluntary liquidation or fails to accomplish it within the time agreed to by FmHA, the County Supervisor will recommend foreclosure in accordance with Subpart A of Part 1955 of this chapter.

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on eligible or ineligible terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

(a) *Authority.* Subject to prior concurrence of the State Director required by paragraph (b)(8) of this section, the County Supervisor may approve transfer and assumption on eligible or ineligible terms and release borrowers and co-signers from liability, when applicable, when the indebtedness involved does not exceed his/her loan approval authority. If the indebtedness exceeds the County Supervisor's loan approval authority, approval must be by an official with appropriate approval authority.

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Loan classification and/or changes.* A loan may be assumed as outlined in this subparagraph, after which the loan will be classified according to the terms on which it was assumed. Assumption on eligible terms is authorized ONLY when both the assuming party meets eligibility requirements *AND* the property is suitable for the housing program. The following loans may be assumed on eligible or ineligible terms under paragraphs (c) or (d) of this section:

(i) Low-or moderate-income.

(ii) Above-moderate-income.

(iii) ORE for residential property.

(2) *Forms.* (i) Form FmHA 465–5, "Transfer of Real Estate Security," or an executed sales contract, will reflect the agreement between the transferor and the party(ies) who will assume the FmHA debt.

(ii) Form FmHA 1940–1, "Request for Obligation of Funds," will be used for approval of the assumption and/or a subsequent loan, if any.

(iii) Form FmHA 1965–15, "Assumption Agreement—Single Family Housing Loan(s)," will be executed by the assuming party(ies).

(iv) Form FmHA 1965–22, except for assumptions under paragraph (c)(2) of this section.

(v) Form FmHA 1965–23, except for assumptions under paragraph (c)(2) of this section.

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in Subpart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude an otherwise-suitable dwelling from being transferred to another program-eligible applicant simply because it is situated on more than a minimum-adequate site. Consideration must be given to such things as local zoning requirements, road or street access, and marketability of portions separately if subdivided. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the facts must be documented and the property may be retained in the SFH program. When all of the security property is not being transferred to the party assuming the FmHA debt and the balance of the FmHA débt is not paid in full when the assumption is closed, the remaining debt of the transferor will be rescheduled through an accelerated repayment agreement in accordance with § 1965.125(a)(4) of this subpart. OGC will be requested to advise how to retain the appropriate security interest on each portion of the security property. When the balance of the transferor's debt is paid and it is necessary to release the portion of the security property not transferred within the program, OGC will be requested to prepare the release document.

(4) *Suitability of property for retention in program.* (i) A single-family dwelling presently financed by FmHA may be transferred to an eligible applicant on eligible terms provided it meets FmHA program requirements and policies. These properties are not being brought into the RH program in the same sense as existing properties not already financed by FmHA. They are properties in which FmHA already has a long-term lending commitment and security interest. Therefore, such properties may be suitable although they contain more than 1,400 square feet of living area and/or design features which would not be permitted when making an initial loan for an existing dwelling. It must, however, be typical of modest homes in the area.

(ii) In some instances a property presently financed under the Section 502 RH program may be determined to be unsuitable for retention in the program. In those instances, assumption may be on ineligible terms only, according to paragraph (d) of this section. Situations of this type include, but are not limited to:

(A) A dwelling which has been enlarged or improved to the point where it is clearly above modest.

(B) When a determination is made a dwelling should not have been financed originally.

(C) A dwelling brought into the program as an existing dwelling which met program requirements and policies at the time it was originally financed by

FmHA but which does not conform to current policies. This includes the older and/or larger homes of a type which have been proven to create excessive energy and maintenance costs to low- or moderate-income borrowers.

(5) *Amount of assumption.* The transferee will assume the entire FmHA indebtedness unless the indebtedness plus prior liens exceeds the market value of the property, in which case the transferee will assume an amount equal to the market value of the property, less the amount of prior liens, if any. When the buyer and seller have agreed upon transfer for "amount of debt," recapture of subsidy due based on market value of the security property must be calculated and included as part of the total indebtedness.

(6) *Recapture of subsidy.* Recapture of subsidy in connection with assumptions will be as provided in Subpart I of Part 1951 of this chapter.

(7) *Consent of prior lineholder.* If there is a prior lien and if required by security instruments or other agreement, written consent of the prior lienholder will be obtained before approval of a transfer and assumption.

(8) *Junior liens.* When the full amount of the FmHA debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to the FmHA lien(s) being assumed unless the State Director determines those liens will not adversely affect the Government's security interest and that the transferee's ability to repay the FmHA debt will not be impaired. When less than the full indebtedness is being assumed, there must be no liens against the security which are junior to the FmHA lien(s).

(9) *Loan in connection with assumption.* A loan for which the assuming party is eligible may be made according to Subpart A of Part 1944 of this chapter in connection with the assumption.

(10) *Withdrawal of jointly liable borrower.* When a jointly liable borrower withdraws, such as in a divorce case, the remaining borrower will not execute an assumption agreement. Form FmHA 450-10 will be prepared and submitted to the Finance Office if the account is not in the name of the person with whom the account will be continued.

(11) *Change in rural area designation.* Where security property is located in an area which has been redesignated from rural to nonrural, a loan may be assumed without considering the nonrural designation.

(12) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or child (children), assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other loan conditions are met. Interest credit may be granted only to a qualified borrower; therefore, if the house is not occupied by the borrower, interest credit may not be granted. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section as applicable to the circumstances. The loan remains subject to the graduation requirements set forth in Subpart F of Part 1951 of this chapter.

(c) *Assumption on eligible terms.* A loan may be assumed on eligible terms when the transferee meets eligibility requirements in the loan making regulation for the type loan involved, except that a section 504 transferee may have only an ownership interest in the property and must occupy the dwelling as his/her residence after the assumption is closed. Interest rates and amortization periods will be as follows:

(1) Except as provided in paragraph (c)(2) of this section, all assumptions will be at the interest rate in effect when the assumption is approved as determined from Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type loan involved. The repayment period may be up to the maximum legal limit for the type loan involved.

(2) In the situations outlined in paragraphs (c)(2)(i), (c)(2)(ii) and (c)(3)(iii) of this section *only*, the assuming party will execute Form FmHA 1965-15; however, Forms FmHA 1965-22 and FmHA 1965-23 will *not* be completed or submitted to the Finance Office. The name on the account will be changed by submitting Form FmHA 450-10 to the Finance Office. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule), and whether or not the loan is subject to recapture will not be changed by virtue of the assumption. Eligibility for interest credit will be considered or re-evaluated at the time of assumption. Situations where these terms are authorized are:

(i) A deceased or divorced borrower's spouse, other relative, or joint tenant, who acquires title to the property but is not liable for the debt and wishes to assume the loan may do so, after which compliance with the loan conditions is required.

(ii) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1965.116 (b) or (d) of this subpart may do so without considering the assuming party's eligibility for program assistance. In this type situation, interest credit may be considered based on the income of only the occupants of the security property, whether or not the assuming party is one of the oocupants, if the loan is otherwise eligible for interest credit.

(iii) A borrower's spouse, other relative or joint tenant who is not liable for the debt and wishes to assume the debt with an existing borrower may do so.

(d) *Assumption on ineligible terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suitable for retention in the housing program, the debt may be assumed on ineligible terms if the assuming party as repayment ability and it is advantageous to the Government to allow the assumption. If the purchaser does not assume the debt, the loan must be liquidated. After assumption on ineligible terms, the loan will be classified as an ORE loan. A payment on the debt of not less then 10 percent of the unpaid balance, including any subsidy to be recaptured, must be made. The assumption agreement will bear interest at the SFH-Ineligible rate in effect on the date the assumption is approved. The loan balance after the 10 percent payment will be amortized as follows, except the terms will never be longer than the period for which the property will serve as adequate security:

(1) When the purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will be not more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale. When the State Director determines more favorable terms should be given, the assumption may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(e) *Processing and closing transfer with assumption.*—(1) *Refund of unused funds and loan funds not advanced.* Funds remaining in a supervised bank account will be applied to the transferor's account unless the transfer is to an eligible applicant and the funds will be used to complete planned development. In this case the funds will be transferred to a supervised bank account in the transferee's name at closing. Obligation of funds not yet advanced, if any, will be cancelled.

(2) *Preparation and distribution of docket.* Loan docket preparation and forms required will be the same as in Subpart A of Part 1944 of this chapter for section 502 loans or Subpart J of Part 1944 of this chapter for section 504 loans, with the addition of the forms in paragraph (b)(2) of this section. Forms will be prepared and distributed according to the respective FMIs.

(3) *Title clearance and loan closing.* Title clearance and closing of the assumption (and subsequent loan, if any) will be under Part 1807 of this chapter (FmHA Instruction 427.1) and Subpart A of Part 1944 of this chapter for a section 502 loan or Subpart J of Part 1944 of this chapter for a section 504 loan. A State Supplement will be issued with the advice of OGC to provide instructions on:

(i) The type security instrument which is required to secure recapture of subsidy when the loan being assumed is not subject to recapture and a new loan is not being made simultaneously; and

(ii) Whether or not a new security instrument is required when the term of the assumption is extended beyond the final due date of the loan(s) being assumed.

(4) *Property insurance.* Property insurance will be required in accordance with Subpart A and B of Part 1806 of this chapter (FmHA Instructions 426.1 and 426.2), as applicable.

(5) *Account balance.* The unpaid balance of the transferor's account will be obtained from the Inquiry Station of the Finance Office or account status report prepared by the Finance Office. If the loan being assumed is subject to recapture of subsidy, the account balances including total subsidy granted and principal reduction attributed to subsidy must be obtained from the Finance Office Inquiry Station. If the borrower has made a payment which has not been applied, the account will be assumed on the basis of the balance reflected by the Inquiry Station. If a payment pending results in overpayment of the transferor's account, the Finance Office will contact the County Supervisor to determine the disposition of the overpayment.

(f) *Release from liability.* Release from liability will be under § 1965.127 of this subpart when authorized.

§ 1965.127 Release from liability.

(a) *Circumstances when release from liability is authorized.* Release from liability will be accomplished by preparing and distributing Form FmHA 1965–8, "Release From Personal Liability," according to the FMI as follows:

(1) When the total debt is assumed on eligible terms, the borrower and co-signer, if any, will be released from liability by the County Supervisor.

(2) When the total debt is assumed on ineligible terms, upon recommendation of the County Committee the borrower and co-signer, if any, may be released by the County Supervisor *only* when the term of the assumption is not more than 5 years.

(3) When a person who is jointly liable for a loan requests release from liability, he/she may be released from liability by the County Supervisor provided:

(i) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(ii) The value of the security property is at least equal to the debt;

(iii) The withdrawing party's interest in the security property is conveyed to the person with whom the loan will be continued; *and*

(iv) The person with whom the loan will be continued has adequate repayment ability.

(4) When the value of the security property is less than the total debt and an amount equal to the market value of the security is assumed under § 1965.126(b)(5), of this subpart, or sale outside the program for an amount not less than the market value is approved under § 1965.125(a)(2) of this subpart, the transferor (and co-signer, if any) may be released from liability when the determination is made that the transferor (and cosigner, if any) does not have reasonable ability to repay the balance of the debt and the transferor has acted in good faith, adequately maintined the security property and otherwise fulfilled the loan covenants to the best of the borrower's ability. If a cosigner is involved, the transferor will not be released unless the cosigner is also released. Authority to determine release of liability is as follows:

(i) When assumption on eligible terms is approved, the County Supervisor may determine release from liability and will document the determination in the case file.

(ii) When assumption on ineligible terms is approved, or when the property is sold outside the program, the County Committee must make a favorable recommendation on release from liability on Form FmHA 440–2, "County Committee Certification or Recommendation," according to the FMI. After obtaining the County Committee's recommendation, the County Supervisor will determine release from liability.

(b) *Account balances.* When security property is sold for an amount not less than the market value as authorized in § 1965.125(a)(2) of this subpart or assumption of an amount equal to the market value is approved as authorized in § 1965.126(b)(5) of this subpart, the account balance will be handled as follows:

(1) When the transferor (and co-signer, if any) is released from liability, the Finance Office will satisfy the transferor's account when one of the following is received:

(i) In the case of sale outside the FmHA program, a memorandum from the County Supervisor requesting satisfaction of the transferor's account balance, with a copy of Form FmHA 1965–8 attached indicating release from liability;

(ii) In the case of assumption, Form FmHA 1965–22 indicating the transferor is released from liability.

(2) When the transferor (and co-signer, if any) is not released from liability, the account balance after the assumption is processed or cash proceeds are applied will be accelerated using Form FmHA 455–21, "Notice of Acceleration and Demand for Payment."

§ 1965.128 Assignment of promissory notes and security instruments.

When a borrower requests it, with the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis to a third party, who has paid the borrower's account in full. For loans subject to recapture of subsidy, recapture will be calculated based on market value and collected at the time of the assignment. The assignment will be made by a form prepared and furnished by OGC on an individual-case basis. The State Director will execute the assignment instrument(s); and this authority may not be redelegated.

§ 1965.129 Co-signers.

Although a co-signer is personally liable for repayment of the FmHA debt, he/she is not entitled to any interest in the security or the rights of the borrower under the loan or security instruments. If the security is transferred to the co-signer, he/she may assume the FmHA indebtedness on eligible or ineligible terms, as applicable.

(a) *Replacement of co-signer.* If it is necessary to replace a co-signer, a person determined by the County Supervisor to have repayment ability may be substituted. The new co-signer will execute an agreement prepared by

OGC to guarantee payment of the balance owed on the RH debt. The original of the agreement will be attached to the original note and a copy of the agreement will be attached to each copy of the note.

(b) *Release of co-signer.* Upon satisfactory substitution of a new co-signer, the previous co-signer of a note may be released from personal liability by completion of Form FmHA 1965-8 prepared according to the FMI.

§§ 1965.130-1965.135 [Reserved]

§ 1965.136 Redelegation of authority.

The State Director may redelegate in writing any authority delegated to the State Director in this subpart, except where specifically excluded, to one or more of the following State Office employees: Chief, Rural Housing, or Rural Housing Specialist.

§ 1965.137 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statue or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of residents of the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Request for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1965.138 State Supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State Supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006-B (available in any FmHA office).

§§ 1965.139-1965.150 [Reserved]

PART 1980—GENERAL

26. The authority citation for Part 1980 is revised to read as follows:

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

Subpart D—Rural Housing Program Loans

27. Section 1980.337, Administrative A, is revised to read as follows:

§ 1980.337 Loan servicing.

* * * * *

Administrative

A. The County Supervisor is authorized to approve any servicing action consistent with customary and reasonable private sector servicing practices, but not more lenient than practices outlined in Subpart C of Part 1965 of this chapter.

* * * * *

Dated: September 9, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85-23238 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 341

Certificates of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule clarifies and affirms the requirement that a decision be issued and the applicant be notified in all cases involving an application for a Certificate of Citizenship, and specifically includes cases which are closed administratively. Additionally, minor technical amendments, including removing sexist language, are made.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW.; Washington, D.C. 20536, Telephone: (202) 633-3048;

For Specific Information: R. Michael Miller, Deputy Assistant Commissioner, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3320.

SUPPLEMENTARY INFORMATION: Presently, 8 CFR 341.6 does not address cases which are closed administratively. Therefore, in order to ensure that a decision is issued in all cases, including those which are closed administratively, the regulation is being revised.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule merely clarifies an existing regulation.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule, if promulgated, does not have a significant impact on a substantial number of small entities.

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 341

Administrative practice and procedure, Certificates of citizenship.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 341—CERTIFICATES OF CITIZENSHIP

1. The authority citation for Part 341 continues to read as follows:

Authority: Secs. 103 and 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1103 and 1452.

2. Section 341. is revised to read as follows:

§ 341.5 Report and recommendation.

The officer assigned to act on the application shall report his/her findings and recommendation by completing the Report and Recommendation section of the Form N-600 application, or by formal order, as appropriate. The record, includig the report and recommendation, shall be submitted to the distict director, who shall sign the report either approving or disapproving the recommendation.

3. Section 341.6 is revised to read as follows:

§ 341.6 Denial of application.

If it is the decision of the district director to deny the application for a Certificate of Citizenship, the applicant shall be furnished the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). After an application for a Certifcate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7 reduced by the