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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1951, 1955, and 1965

Property Management and Security Servicing

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) amends its regulations on property management and security servicing for single family housing (SFH) loans. This action is taken to clarify the intent of the regulations, implement changes required by recent law and to change internal agency management provisions. The intended effect is to broaden, strengthen and clarify FmHA's regulations on disposal of inventory property and security servicing.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially effect budget outlay or effect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Background/Discussion

On April 2, 1987 (52 FR 10577), FmHA published a proposed rule on property management and security servicing for SFH loans. FmHA now publishes these proposed revisions for final rule. In addition, FmHA published a proposed rule on September 1, 1987, (52 FR 32935) on security servicing for SFH loans. This final rule addresses and incorporates those revisions proposed on September 1, 1987. FmHA publishes in final these two proposed rules at the same time since they affect the same CFR Parts and publication concomitantly will minimize the burden on FmHA field personnel and the general public.

On May 23, 1988 (Part II) (53 FR 18392), FmHA published a proposed rule pursuant to the Agricultural Credit Act of 1987 which includes proposed changes to 7 CFR Parts 1955 and 1965. That rulemaking action primarily affects farmer program (CONACT) portions of the aforementioned Parts. This rulemaking action primarily affects housing borrowers/properties and has no impact on the intent or changes in 7 CFR Parts 1955 and 1965 being proposed as a result of the Agricultural Credit Act of 1987.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.427 Rural Rental Assistance Payments

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials: 10.404-Emergency Loans, 10.406-Farm Operating Loans, 10.407-Farm Ownership Loans, 10.410-Low Income Housing Loans, 10.416-Soil and Water Loans, and 10.417-Very Low Income Housing Repair Loans and Grants. The following programs are subject to intergovernmental consultation with State and local officials: 10.405-Farm Labor Housing Loans and Grants, 10.411-Rural Housing Site Loans, 10.414-Resource Conservation and Development Loans, 10.415-Rural Rental Housing Loans, 10.418-Water and Waste Disposal Systems for Rural Communities, 10.419-Watershed Protection and Flood Prevention Loans, 10.421-Indian Tribes and Tribal Corporation Loans, 10.422-Business and Industrial Loans, 10.423-Community Facility Loans, and 10.427-Rural Rental Assistance Payments.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–90, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add/remove any authorities which would effect small entities.

Discussion of Comments—April 2, 1987, Proposed Rule

The proposed rule published in the **Federal Register** (52 FR 10577) on April 2, 1987, provided for a 60-day comment period. Five comments were received during the comment period. Three comments were received late, but nevertheless were considered in the scope of this review. Of the eight comments, three were from FmHA field employees, and five were from sources outside FmHA. Generally, the comments were favorable with two comments (from outside FmHA) strongly supporting the proposed rule. Several comments were outside the scope of the proposed rule, and three commentors strongly opposed certain sections of the proposed rule. The major concerns appeared in the areas of suitability determinations, downpayment requirements and property which does not meet the Agency's definition of "Decent, Safe and Sanitary" (DSS). The area of suitability determinations was not addressed in the proposed rule. Downpayment requirements will be discussed below, and there appeared to be confusion over properties that do not meet DSS standards. The commentor is under the misconception that all "unsuitable" properties do not meet DSS standards. Generally, unsuitable properties do meet DSS standards. The terms, "unsuitable" and "non DSS", are not interchangeable. For example, an inventory property with an inground swimming pool would be considered unsuitable for retention in the program due to an above modest feature (the pool), however this property may be decent, safe and sanitary. To clarify this area of potential confusion, FmHA has changed the terms "suitable" and "unsuitable" to "program" and "nonprogram" respectively. We believe these changes more accurately describe the property and will prevent such confusion in the future.

A summary of the comments relating to the April 2nd proposed rule by section area and changes to the proposed regulation which are being incorporated into the final rule are as follows:

Section 1955.113

One commentor suggested that the period of time suitable (program) property is available for sale to anyone after the 45-day retention period be set by the State Director consistent with market conditions in the State. We concur this suggestion has merit, however, we believe consistency within FmHA sales methods throughout the country is more valuable. A uniform policy also makes it easier to establish listing notices, exclusive broker contracts, open listing agreements, etc. Another commentor suggested that three administrative price reductions be authorized with the State Director having authority to authorize additional price reductions instead of the two administrative price reductions as proposed. FmHA considered this when developing the proposed rule, however felt that the two larger administrative price reductions should sell the property within a reasonable period of time. If not, FmHA needs to review the situation to determine why the property is not selling. A new appraisal may be necessary or additional marketing efforts may promote a timely sale. The regulation has been revised to require that a higher level office review the case file, including documentation of marketing efforts, after the two price reductions and provide guidance on future sales efforts. Should FmHA later determine that additional administrative price reductions should be authorized, regulations will be published to that effect.

An additional change has been incorporated into the final rule that will make the date administrative price reductions take effect easier to compute. For computation purposes, each month will be considered to have thirty days.

Section 1955.114

Most commentors were in favor of the longer retention period during which suitable (program) property is offered exclusively for sale to eligible (program) applicants, and suggested even longer periods. One commentor suggested the retention period be left at 30 days with the State Director having the authority to establish a longer period of time if necessary. Again, we believe that such a retention time is best left uniform throughout the country for consistency. FmHA policy is to sell suitable (program) property to eligible (program) applicants. This policy was established internally by the Agency to further the objectives of our Housing program. The retention period has been increased 300 percent since 1985. FmHA, however, also has an obligation to dispose of inventory property as quickly as possible to relieve the Government of the tremendously high costs of retaining property in inventory. We believe the 45-day retention period is more than sufficient time for an eligible (program) applicant to make a prudent decision regarding homeownership. It is quite apparent to FmHA, and to any other seller, that if property remains unsold after a month and one-half of active marketing, additional marketing efforts are needed. It should also be noted that although sales are then opened up to any purchaser, an eligible (program) applicant always has preference on suitable (program) property sales.

Section 1955.116

One commentor recommended that FmHA include the estimated cost of repairs in advertisements of properties that do not meet "Decent, Safe and Sanitary" (DSS) standards. We do not concur with this recommendation. First, FmHA does not always estimate the cost of repairs when determining the suitability of a house for retention in the program. Second, when FmHA does estimate such a cost, it is an estimate of how much it will cost FmHA to contract for such repairs/renovations. This may be significantly different from the costs for an individual purchaser to make such repairs/renovations. We believe that listing the repairs that are necessary to make the house meet DSS standards is sufficient information for a potential purchaser to make a prudent decision.

One commentor strongly opposed the proposed modification in the DSS language that would eliminate the "standard all encompassing" language currently being used. The commentor states that after a purchaser has made repairs/renovations as required by the sales agreement/quitclaim deed and FmHA has inspected same, the Agency has further responsibilities to ensure that the structure meets DSS standards. FmHA disagrees with this comment. FmHA has no legal or statutory basis by which to require that the purchaser of non DSS inventory property make repairs/renovations beyond those required to remove the DSS occupancy restrictions in the deed to the property. Such a policy, in addition to being unenforceable, would effectively make non DSS properties unsalable.

The commentor further suggests that regulations be expanded to include the requirement that the property be reinspected before the deed restriction is removed. We concur that the regulation is silent in this regard, however, believe it is implied in the instruction and is being accomplished nationwide. Regardless, we have incorporated this requirement in the regulation.

The same commentor suggested that FmHA demolish any property which has been determined unsuitable (nonprogram) due to location or design. We believe such a policy is too harsh and hasty. A property which has been determined to be unsuitable (nonprogram) due to location may be a structure that is remotely located. A farmer, business or other concern may have interest or use for such a property. Similarly, a property which is unsuitable (nonprogram) due to design may have uses beyond a housing-unit for very-low and low-income FmHA borrowers. We have however, expanded our regulations on sale of property independently as chattel and vacant land.

Section 1955.118

Comments were extremely favorable regarding our proposal to reduce downpayment requirements on sales to ineligible (nonprogram) applicants, with two exceptions. One commentor, however, strongly opposed the proposal stating that FmHA had no justification for such action. Section 510(e) of the Housing Act of 1949, as amended, provides the Secretary with broad authority by which to sell acquired property. A downpayment is not required by statute. FmHA reduces downpayment requirements to assist the Agency in selling inventory property. FmHA continues to acquire property into inventory at a steady rate. The costs of retaining these properties in inventory are staggering and present a problem with which the Agency and other Departments are very concerned. We believe the commentor's concern is that ineligible (nonprogram) applicants will be purchasing suitable (program) inventory property. There is nothing to preclude such an action now, yet FmHA sells very few suitable (program) inventory houses to ineligible (nonprogram) applicants. Eligible (program) purchasers always have preference in suitable (program) property sales. They are provided a minimum of 3 exclusive 45-day retention periods in which to purchase a suitable (program) inventory property. The Agency has provided very prudent means by which to sell suitable (program) property to eligible (program) applicants.

The other comment opposing the reduction in downpayment requirements suggested that the reductions only be provided to eligible (program) applicants. There are no downpayment requirements from eligible (program) applicants for the purchase of suitable (program) inventory property. One commentor strongly supported the reduction in the downpayment requirements and suggested FmHA go further by eliminating the downpayment requirement for owner/occupant ineligible (nonprogram) terms financing. FmHA does not concur with this suggestion. Generally, applicants who will qualify for this type of credit will have incomes in excess of FmHA program income levels. We feel a two percent downpayment, together with payment of closing costs from personal funds, is reasonable for this type of debtor to be able to purchase a home.

Section 1955.130

Comments on this section were generally favorable with one exception. The commentor does not believe FmHA should pay a real estate commission to a real estate broker who purchases the property for his/her own use. As mentioned in the proposed rule, FmHA policy in not paying commissions in these instances is inconsistent with the Department of Housing and Urban Development (HUD) and the Veterans Administration (VA). The policy is also inconsistent with private sector sales. FmHA has no reason not to pay a commission in these instances. The commentor suggests a real estate broker will not submit an offer from an eligible (program) purchaser but will wait to submit their own offer to purchase the property. Real estate brokers are professionals who are licensed to sell real estate and are guided by professional ethics as well as State laws. It would be unconscionable and possibly unlawful for a real estate broker not to submit a valid offer to the seller. This comment was not incorporated into the final rule.

Sections 1955.147 and 1955.148

No comments were received on these sections. However, further changes have been made in the regulation to clarify how suitable (program) property is to be sold by sealed bid or auction. The changes require the bid deposits from eligible (program) purchasers to be the same as an earnest money deposit and not the full ten percent currently required.

Section 1965.126

Three comments were received on this section. One recommended the downpayment on ineligible (nonprogram) transfers be based upon the market value of the property, or the unpaid debt, whichever is lower. We concur with this recommendation. In some areas, the FmHA debt exceeds the market value. To not make the downpayment requirement prohibitive, we agree that same be based upon the market value or unpaid debt, whichever is lower.

Another commentor opposed the revision. They believe allowing an ineligible (nonprogram) purchaser to assume the debt of an eligible (program) borrower is an inappropriate use of loan funds. Our existing regulations, which already permit the assumption of an FmHA loan on ineligible (nonprogram) terms, require a 10 percent downpayment to consummate the transaction. FmHA has only proposed to reduce the downpayment. This is an assumption of an existing debt, therefore no new loan funds are involved. Further, when the debt is assumed, it is assumed on ineligible (nonprogram) terms. The interest rate is generally increased, a downpayment is required, and the term of the loan is reduced. We believe the proposed rule will assist borrowers in selling their property should the borrower so desire. The choice of who purchases the property is strictly their own.

Section 1965.128

One comment was received relating to this section. The commentor suggested the authority to assign security instruments be expanded to include accounts that have been accelerated after all appeals have been exhausted. We concur this authority should be granted as was done in the predecessor regulation to Subpart C of Part 1965 and have incorporated this suggestion into this final rule.

A minor change affecting the wording in the proposed rule is incorporated into this final rule. In the proposed rule, an assignment of security instruments is authorized when "A junior lienholder has foreclosed its lien and is paying FmHA in full." This should have read if "A junior lienholder is foreclosing and is paying FmHA in full." There would be no reason to provide an assignment of security instruments to a junior lienholder if they have already foreclosed, have title to the property, and wish to pay off FmHA in full.

Other Sections

One commentor suggested that FmHA revise its regulations on suitability determinations since they relate closely to the proposed rule. The commentor also stated the proposed regulations did not contain a definition of "suitable" (program) and "unsuitable" (nonprogram) property. 7 CFR Part 1955, Subpart C, does contain the definition of suitable (program) and unsuitable (nonprogram) property. The commentor should refer to § 1955.103. Suitability determinations are made pursuant to Subpart B of Part 1955, which contains guidance on same. FmHA recognizes that clarification of how suitability determinations are made may be necessary and will be publishing proposed revisions to Subpart B of Part 1955 either concomitantly or shortly after this final rulemaking action.

Another commentor suggested that FmHA regulations be expanded to permit the reclassification of property from suitable (program) to unsuitable (nonprogram), and vice versa. Further, if FmHA sells a property as unsuitable (nonprogram), the Agency should permit the designation to be changed to suitable (program) should the property later be repaired/renovated to meet such standards. FmHA concurs with the first comment and will be proposing language that would permit changes in suitability determinations in another rulemaking action, however, it should be noted that generally, an "unsuitable" (nonprogram) property will remain an unsuitable (nonprogram) property. The second half of the comment is a moot issue. If a FmHA property is sold from inventory to a nonprogram purchaser, it loses its label of suitable (program) or unsuitable (nonprogram). Should an FmHA applicant desire to purchase the property at a later date, the property would be considered for financing under the applicable program regulation regardless of its previous suitability designation.

Discussion of Comments—September 1, 1987 Proposed Rule

The proposed rule published in the **Federal Register** (52 FR 32935) on September 1, 1987, provided for a 60-day comment period. Three comments were received from the general public. Five written comments were received from FmHA field personnel which dealt primarily with minor clarifications and internal agency management. Of the eight comments, two (from outside the Agency) were received late, however, they have been considered in the development of this rulemaking action.

Of the eight comments received, seven strongly supported the proposed rule. Only one commentor opposed the proposed regulation changes. However, it appears from the content of this letter, the commentor did not fully understand the proposed rule. The commentor believes the proposed regulation is an attempt to preclude FmHA program applicants from purchasing properties which are involved in the "debt exceeds value" situation. This is completely adverse to the intent of the regulation. Current FmHA regulations permit the Agency to receive an amount less than the market value of the property when the sale is to a purchaser financing the property from a source other than FmHA. Since there is cash at the closing, FmHA will accept payment in full for less than market value so necessary and authorized closing expenses can be paid to complete the sale. The problem arises, however, when an FmHA borrower desires to sell to an FmHA applicant and the applicant will be assuming all or a portion of the existing FmHA debt (at market value). Since there is no money at the loan closing, the selling expenses cannot be paid, thus precluding the sale from an FmHA borrower to an FmHA applicant. The proposed regulations would allow FmHA to pay for such expenses (by voucher) thus permitting program transfers. The true beneficiaries of this action are FmHA applicants. We believe this document and review of the proposed rule should clear up any confusion of the commentor.

A different commentor strongly supported the proposed regulation, however, felt that FmHA should only authorize payment of authorized selling expenses when the sale is to an FmHA program applicant. We do not concur with this comment. The intent of this rulemaking action is to assist borrowers whose FmHA debt and authorized selling expenses exceed the market value of the property. For these parties, there is no alternative beyond voluntary conveyance or foreclosure. Who purchases the property is strictly a matter between the FmHA borrower/seller and a potential purchaser. FmHA does not believe it should prescribe or interfere in who can purchase these properties.

Another commentor opposed the requirement that a financial statement be taken from the borrower to ascertain whether they have adequate funds to pay any or all of the authorized selling expenses. The commentor reaffirmed the Agency's intent to assist the borrower in selling their property and avoiding a voluntary conveyance. The proposed policy of taking a financial statement for a voluntary sale was questioned as being counterproductive to the intent of the proposed rule. Further, the proposed rule only affects situations where the debt and authorized selling expenses exceed the market value of the property. In such economically depressed areas, it is extremely unlikely that an FmHA borrower will have funds to pay towards closing. The commentor believes the policy is counterproductive and overly burdensome on the public. We partially concur with this comment, however, for apparent reasons, FmHA does need to know if the borrower has funds available to pay their own closing expense. The regulations have been expanded however, to include that if a current financial statement is on file, a new statement will not have to be taken.

Another commentor recommended that the County Committee action required for certain release from liability actions be amended. County Committees are generally used in the Farmer Program area only and are unfamiliar with housing issues. We concur with this comment. In the past, FmHA was limited by statute for certain of our release from liability actions. Recent changes in the Housing Act of 1949, as amended, now provide us with broader release from liability authorities and we have revised our regulations accordingly.

Summary of Other Revisions

The following revisions are included in this final rule and were not published for proposed rule as they clarify the intent of the existing regulation, make changes required by law, make necessary reference changes to other FmHA regulations as the result of changes in Part 1955 and changes determined to be within the scope of internal agency management. A summary of the more significant changes by section number are as follows:

Subpart A of Part 1955

1. Section 1955.4 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority granted to said position in this subpart to a State Director. Also, the section is revised to correct the titles of employees under the jurisdiction of the Hawaii State Director.

2. Section 1955.10(a) is expanded to provide County Supervisors with the authority to accept a voluntary conveyance of a single family housing (SFH) property regardless of the amount of the indebtedness.

3. Section 1955.10(d)(3) is expanded to provide an exception to the requirement that a financial statement be taken for SFH voluntary conveyances since it is Agency policy to accept such voluntary conveyances with release from liability if the borrower has cooperated in good faith, satisfactorily maintained the property, and otherwise fulfilled the covenants of the loan agreements to the best of the borrower's ability.

4. Section 1955.10(e) is revised to give the State Director the authority to procure appraisals from a source outside FmHA for SFH voluntary conveyances.

5. Section 1955.10(h) is revised to provide guidance to FmHA personnel on how to handle unsatisfied accounts after a voluntary conveyance.

6. Section 1955.11(b) is expanded to permit FmHA to pay necessary and proper fees, approved by the bankruptcy court, to secure the conveyance of property from a trustee in bankruptcy

7. Section 1955.15(a)(2) is expanded to give District Directors the authority to accelerate Multiple Family Housing (MFH) loans which are within their loan approval authority.

8. Section 1955.15(b) is expanded to provide guidance on initiating steps to meet the requirements of the National Historic Preservation Act. This affects properties which are over fifty years old and which the Government will likely acquire at the time of the foreclosure sale. Since this is generally a lengthy process, FmHA plans to initiate such steps prior to foreclosure instead of after acquisition to prevent delays in selling the property.

9. Section 1955.15(f) is expanded to provide the State Director with the authority to obtain appraisals by contract from a source outside FmHA when necessary for FmHA to bid at a foreclosure sale.

10. Section 1955.20(d) is expanded to give the State Director the authority to obtain chattel appraisals by contract from a source outside FmHA when necessary.

Subpart B of Part 1955

1. Section 1955.53 is expanded to amend the definition of "Contracting Officer" consistent with Federal Acquisition Regulations.

2. As mentioned in the discussion of the comments on the April 2, 1987, proposed rule, FmHA has revised its terminology of "suitable" and "unsuitable" property as they relate solely to SFH and MFH loans. To better fit the intent of the property classification, "suitable" property is renamed "program" property, and "unsuitable" property is renamed "nonprogram (NP)" property. This new terminology better describes the property, and will remove the negative stigma the term "unsuitable" connotes. Similarly, in Subpart C of Part 1955, the terms "eligible" and "ineligible" terms financing, are changed to "program" and "nonprogram" terms financing. This will provide consistency in terminology throughout property management. Therefore the definitions of "suitable" and "unsuitable" property contained in paragraph 1955.53 and throughout Subparts B and C of Part 1955, have been revised. The term "suitable" property is still retained, however, for property other than SFH or MFH (generally FP property).

3. Section 1955.54 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority of said position in this subpart to a State Director. This paragraph is also revised to correct the titles of employees under the jurisdiction of the Hawaii State Director.

4. Section 1955.55 is expanded to include a new paragraph on emergency advances when liquidation is pending.

5. Section 1955.57 is added to provide guidance on inventory property containing underground storage tanks.

Subpart C of Part 1955

1. Section 1955.103 is expanded to include in the definition of "Decent, Safe and Sanitary" that properties must also be safe.

2. As mentioned in the summary of changes in Subpart B, the terms "suitable" and "unsuitable" as they relate to the housing inventory property have been changed to "program" and "nonprogram" (NP). Similarly, references to credit on "eligible" and "ineligible" terms, as they relate to housing property, have been changed to "program" and "nonprogram" (NP). The definitions in § 1955.103 have been revised and alphabetized accordingly, and references to the aforementioned terms have been revised throughout Subpart C.

3. Section 1955.104 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority of said position in this subpart to a State Director. The paragraph is revised to correct the titles of employees under the jurisdiction of the Hawaii State Director; and clarify that servicing officials have the authority to offer for sale, and accept and/or reject bids or offers for inventory property regardless of amount.

4. Section 1955.111 is removed as it contained information regarding the repair policy on inventory property. Inventory property is repaired under Subpart B of this Part. Section 1955.110 is renumbered to § 1955.111 and § 1955.111 is reserved for future use.

5. Section 1955.112(a) is expanded to clarify that earnest money deposits will not be taken in connection with sales by FmHA personnel.

6. Section 1955.112(b) is revised to: 1. Give the County Supervisor the authority to utilize the services of real estate brokers under an open listing agreement (previously, the authority was granted to the State Director); 2. strongly encourage the use of exclusive brokers; 3. and clarify that earnest money deposits are exclusive of any required credit report fee.

7. Section 1955.112(c) is revised to encourage the use of sealed bids and auctions for SFH property when diligent sales efforts and adequate market exposure fail to sell the property.

8. Section 1955.113(a) is revised as provided in the proposed rule with the following changes: 1. For ease in computing dates between administrative price reductions, each month is assumed to have 30 days; and 2. to provide further guidance of sales steps after the two administrative price reductions have been utilized and the property remains unsold.

9. Section 1955.114(a), which outlines the sales steps for program property, is completely revised for clarity. Paragraph (a) was lengthy and cumbersome and has been broken down into smaller segments. The paragraph has been expanded and clarified to: 1. Establish the new 45 day retention period for program applicants to purchase program properties; 2. clarify that an acceptable offer must be for at least the sale price; 3. clarify that an offer to purchase property is considered independently of any credit request; 4. require that offers be date stamped when received and be numbered sequentially when being drawn by lot; 5. establish a five-day waiting period during which offers can be received when the property is listed for sale under an exclusive broker contract (this will allow all real estate brokers an equal chance of selling the property); 6. clarify the priority of offers process; 7. provide for back-up offers; 8. clarify that if an offer subject to FmHA financing is accepted, and the offeror's credit request is later denied, the contract is considered null and void and the sale will continue to others regardless of whether the offeror decides to appeal the adverse decision as to their credit request; and 9. include a subparagraph on sales steps for unsold property.

10. Section 1955.114(b) is expanded to provide further guidance on the handling of offers to purchase Multiple-family housing inventory property. In particular, language is added on establishing a time/date/place for the drawing when multiple offers are received and how to handle offers when the offeror's FmHA credit request is denied.

11. Section 1955.115(a) is expanded to provide additional guidance on: 1. Submitting requests to the State Director to sell nonprogram (NP) property by sealed bid or auction when the property remains unsold after two administrative price reductions; 2. additional guidance on sale on NP property as chattel; 3. additional guidance on sale of vacant land; and 4. provide guidance on steps to take when NP property remains unsold after five months of active marketing.

12. Section 1955.116 is revised as outlined in the proposed rule with the following minor changes: 1. "Decent,

Safe and Sanitary (DSS)" clauses used in advertising do not have to list the items which make the property not meet DSS standards, the advertisement will adivse any interested party to contact the local office for the list, and 2. require that FmHA inspect the property prior to releasing a restrictive covenant.

13. Section 1955.118 is expanded and revised to: 1. Provide additional guidance on accepting, processing and approving offers to purchase inventory property on NP terms; 2. provide additional guidance on modification of security instruments on loans to NP borrowers when certain covenants of standard FmHA security instruments do not apply; and 3. reduce the downpayment requirements as discussed in the proposed rule.

14. Section 1955.130(a) is expanded to: 1. Encourage the use of exclusive real estate brokers; 2. remove the reference to setting a commission rate in exclusive broker contracts since this rate will be part of the evaluation criteria; and 3. remind field personnel that when utilizing the services of real estate brokers under an open listing agreement, the field office is responsible for advertising.

15. Section 1955.130(f) is revised and expanded to provide guidance that: 1. FmHA may not set the commission rate in an exclusive broker contract; the commission will be one of the evaluation criteria; 2. when a real estate broker submits a bid on an exclusive broker contract and the proposed commission rate is lower than the typical rate for such services, they must supply documentation that they have successfully sold property at the lower rate with no compromise in services; 3. commissions paid under an open listing agreement will be the typical rate for such services in the area and will be established by the servicing official (the State Director previously established the rate); 4. incorporate the revision from our proposed rule that a commission will be paid when the sale is to the broker and they are not receiving FmHA credit for the purchase of the property. In these cases where an exclusive broker is involved, if a sale is to a cooperating broker and they are receiving FmHA credit for the purchase, one-half the respective commission will be paid to the exclusive broker.

16. Section 1955.131(b) is revised for consistency. As with other FmHA contracts for sale services, FmHA may not set the commission rate in an auctioneer contract. The rate of commission will be one of the evaluation criteria in the contract. However, any bidder that submits a bid with a commission rate lower than the typical rate for such services in the area, must supply documentation that they have successfully sold properties at the lower commission rate with no compromise in services.

17. Section 1955.135 is expanded and revised to clarify how FmHA will adjust and pay taxes when inventory property is sold.

18. Section 1955.137 is expanded to include two new subparagraphs on advising potential purchasers of FmHA inventory properties with reportable underground storage tanks and how to handle property (exclusive of buildings) which is considered unsafe.

19. Section 1955.141 is expanded to provide District Directors in Puerto Rico with the authority to execute nonwarranty deeds for the sale of inventory property. This authority currently lies with State Directors. In Puerto Rico, the party executing the deed must be present at the time title to the property is transferred. It is too burdensome and costly for the State Director in Puerto Rico to attend the closing of every inventory property sale, therefore, this authority is delegated to a more local level.

20. Section 1955.143 is expanded to provide additional guidance to field personnel on reporting inventory property that has not sold within a reasonable period of time to a higher level office for review and guidance.

21. Section 1955.146 is expanded to provide more emphasis and guidance on advertising inventory property for sale.

22. Section 1955.147 is expanded to: 1. Provide guidance in determining a minimum sale price for a sealed bid sale; and 2. provide that when program or suitable property is sold by sealed bid that credit on program terms will be offered and that bid deposits will be comparable to an earnest money deposit instead of the ten percent bid deposit required from other purchasers.

23. Section 1955.147(b) is revised as discussed in the proposed rule and to clarify that any FmHA credit extended may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Also the paragraph provides guidance that if a bid is received which requests FmHA credit in excess of market value, that the bidder will be given the opportunity to reduce their credit request with no accompanying change in the offered price.

24. Section 1955.148 is expanded and clarified to: 1. Provide guidance on how to establish a minimum sale price; 2. clarify that any FmHA credit extended may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security; and 3. provide that, as addressed in the proposed rule, program applicants receive no preference in auction sales.

Subpart E of Part 1901

1. Revised to correct references to exclusive broker contracts and establish when Affirmative Fair Housing Marketing Plans are required.

Subpart G of Part 1951

1. Revised references to "suitable" property.

Subpart M of Part 1951

1. Revised to correct a procedure reference and add a reference to the SFH NP interest rate.

Subpart C of Part 1965

1. Revised references from "eligible" and "ineligible" rates/terms/applicants to "program" and "nonprogram (NP)" rates, terms/applicants. Similarly, references to "suitable" and "unsuitable" properties are revised to "program" and "nonprogram (NP)" properties.

2. Section 1965.104(c) has been partially revised to authorize the State Director to approve protective advances for house maintenance when continuing with the borrower. Previously, National Office review and consent was required, which could cause unnecessary delays in making a protective advance.

3. Section 1965.106 has been expanded to: 1. Clarify that subordination granted to enable a borrower to graduate also includes refinancing without Agency request; and 2. provide the State Director with the authority to approve subordinations regardless of the amount of indebtedness.

4. Section 1965.125(a) has been partially revised to require County Supervisors to inform borrowers of apparent equity in voluntary liquidation actions. Previously, this section required County Supervisors to inform borrowers of the amount of equity in the property. Without doing a full appraisal, and computing interest credit recapture based upon estimates of allowable sale expenses, which would be impractical, it is not possible for a County Supervisor to provide a borrower with an accurate estimate of equity.

5. Section 1965.126(b)(4)(ii) has been clarified. This paragraph provides guidance of determining the suitability of properties for retention in the program when an assumption of the existing FmHA debt is being considered.

6. Section 1965.126(b)(5) is expanded to clarify that "as is" market values will be considered in assumption cases.

7. Section 1965.126(b)(13) is expanded to clarify that FmHA will not suggest, encourage or require a transferor to make repairs as a condition for approving a transfer with assumption.

8. Section 1965.126(c)(2) is expanded to clarify that in those specific cases where a same terms assumption is authorized, if the current interest rates/terms are more favorable to the assuming party, an assumption on new terms may be accomplished provided the assuming party meets program eligibility requirements. Although the current regulation does not preclude such an action, wording is being added to clarify this point.

9. Paragraph 1965.126(d) is revised to exclude the requirement that to assume an existing FmHA loan on NP owner/occupant terms, the applicant must be unable to secure other financing. Assumptions on NP terms are authorized to assist borrowers with the sale of their property. Since this credit is extended at a higher interest rate and on shorter terms than those authorized for program applicants, there is no reason to carry over the program requirement of inability to secure other financing to NP applicants.

10. Section 1965.127 is revised to remove: 1. The requirement for County Committee certification in NP transfers; 2. the restriction that borrowers cannot be released from liability on NP transfers with a term in excess of five years; 3. the restriction that a jointly liable borrower cannot be released from liability unless the value of the property is at least equal to the debt; and 4. the requirement that repayment ability be considered in sale for less than the debt cases.

11. Section 1965.137 is expanded to require that the borrower's case file and/or all related files or pertinent information be submitted to the National Office when requesting an exception under the exception authority.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1951

Account servicing, Low and moderate income housing loans—Servicing, Reporting requirements, subsidies.

7 CFR Part 1955

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

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

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

PART 1901—PROGRAM RELATED INSTRUCTIONS

1. The authority citation for Part 1901 continues 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 E—Civil Rights Compliance Requirements *C* -

2. In § 1901.203, paragraphs (c)(4)(iv) and (c)(5)(iv) are revised to read as follows:

§ 1901.203 Title VIII of the Civil Rights Act of 1968.

* * * * *

(c) * * *

(4) * * *

(iv) For real estate brokers listing housing properties on an exclusive basis, at any time more than 5 properties are listed for sale by FmHA in the same subdivision.

* * * * *

(5) * * *

(iv) For real estate brokers who list acquired rural housing properties under an exclusive listing contract, one year or until all properties covered under the plan have been sold, whichever is later.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

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

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

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

4. In § 1951.315, the first sentence is revised to read as follows:

§ 1951.315 Refinancing.

Refinancing of Section 502 loans is authorized when the property meets program standards and either interest credit would not be available because the loan was approved prior to August 1, 1968, or the loan was made as an above-moderate income or NP loan and the borrower would now be eligible for a loan with interest credit and, through circumstances beyond the borrower's control, the borrower is in danger of losing his/her home. * * *

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

5. In § 1951.612, paragraph (a)(1)(iii) is revised to read as follows:

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

* * * * *

(a) * * *

(1) * * *

(iii) If the recipient was not eligible for a loan, or if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604 of this Subpart, the recipient may be allowed to enter into an accelerated repayment agreement according to § 1965.125(a)(3) of Subpart C of Part 1965 of this chapter, if an SFH loan, except that the above-moderate or nonprogram (NP) interest rate which was in effect on the date the loan was approved will be used according to Exhibit C of this Subpart (Available in any FmHA office). This provision should be used only where repayment can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be classified as a NP loan.

* * * * *

PART 1955—PROPERTY MANAGMENT

6. The authority citation for Part 1955 continues to read as follows:

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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. In § 1955.1, the following sentences are added between the fourth and fifth sentences:

§ 1955.1 Purpose.

* * * For Community Programs and insured B&I actions involving loans secured by other than real estate or chattel property, such loans will be handled in accordance with the provisions of this subpart which do not deal specifically with real or chattel property. Prior to liquidation, these cases will be submitted to the National Office for prior review and guidance. * * *

8. In § 1955.2, the period at the end of the text is changed to a comma, and the following words are added:

§ 1955.2 Policy.

* * * unless specifically referenced in this subpart.

§ 1955.3 [Amended]

9. Section 1955.3 is amended by removing all paragraph designations.

10. Section 1955.4 is revised to read as follows:

§ 1955.4 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director is authorized to redelegate, in writing, any authority in this subpart to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(2) of this subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(c) The District Director is authorized to redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist determined by the District Director to be qualified; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(1) of this subpart may not be redelegated. However, a duly designated Acting District Director may approve or disapprove foreclosure. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor is authorized to redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7, or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska and Area Supervisors in the Western Pacific Territories and American Samoa.

(e) The monetary limitations on acceptance of voluntary conveyance as provided in § 1955.10(a) of this subpart may *not* be redelegated from a higher-level official to a lower level official.

11. In § 1955.5, paragraph (d) is revised to read as follows:

§ 1955.5 General actions.

* * * * *

(d) *Payment of costs.* Costs related to liquidation of a loan or acquisition of property will be paid by preparation of Standard Form 1034, "Public Voucher For Purchases and Services Other Than Personal," Standard Form 1143, "Advertising Order," or Form AD 838, "Purchase Order," and submission of Form FmHA 2024-1, "Miscellaneous Payment System," or Form FmHA 838B, "Invoice—Receipt Certification," as appropriate, according to FmHA Instruction 2024-P (available in any FmHA office) and the respective Forms Manual Insert (FMI) as either a recoverable or nonrecoverable cost as defined in § 1955.53 of this subpart.

12. In § 1955.10, paragraphs (a)(1), (a)(2)(iii), (d)(3), (d)(7), (e), the introductory text of paragraph (f)(1), the first sentence after the indented text in the introductory text of paragraph (f)(2), paragraph (h)(1) are revised, paragraphs (h)(5) and (h)(6) are renumbered as paragraphs (h)(6) and (h)(7) respectively and a new paragraph (h)(5) is added to read as follows:

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

* * * * *

(a) * * *

(1) *Loans to individuals.*

(i) *SFH loans.* The County Supervisor is authorized to accept voluntary conveyances regardless of amount of indebtedness.

(ii) *FP loans.* The County Supervisor is authorized to accept voluntary conveyance of property secured by Farmer Program loans if the total indebtedness against the property including prior and junior liens, does not exceed his/her approval authority for the type of loan (or combination of types) involved. Loan approval authorities are outlined in Exhibits A through E of FmHA Instruction 1901-A (available in any FmHA office). The State Director is authorized to approve voluntary conveyances regardless of amount of indebtedness.

* * * * *

(2) * * *

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2)(i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance offer. Submissions will include the case file; OGC's opinion on settling any other liens involved; a statement of essential facts; and recommendations of the State Director and Program Chief. Submissions are to be addressed to the Administrator, ATTN: (appropriate program division.)

* * * * *

(d) * * *

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410-1, "Application for FmHA Services;" or FmHA 1930-1 or FmHA 442-3, "Balance Sheet," and information on present income and potential earning ability. Exception: A financial statement is not required from a borrower who is indebted for an SFH loan(s) only and will be released from liability.

* * * * *

(7) The borrower may be required to provide a title insurance policy or a final title opinion from a designated attorney when the State Director determines it is necessary to protect the Government's interest. Such title insurance policy or final title opinion will show title vested to the Government subject only to exceptions and liens approved by the County Supervisor.

* * * * *

(e) *Appraisal of property.* As soon as practicable after an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made to establish the market value of the property in its existing condition if an appraisal reflecting current market value is not part of the file. If a qualified FmHA appraiser is not available to appraise property securing a loan other than MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA in accordance with FmHA Instruction 2024-A (available in any FmHA office.) For property securing MFH, prior authorization must be obtained by the Assistant Administrator, Housing, to secure an appraisal from a source outside FmHA.

(f) * * *

(1) *SFH loans.* The policy is to accept an offer of voluntary conveyance of property securing SFH loans in full satisfaction of the debt regardless of market value of the property if the County Supervisor determines the borrower has cooperated in good faith, satisfactorily maintained the property and otherwise fulfilled the covenants of the loan to the best of the borrower's ability. If the County Supervisor cannot make these determinations affirmatively, the offer for full satisfaction of the debt will not be accepted unless the value of the property is at least equal to the debt.

However, the borrower may make a new offer for a credit equal to the value of the property as determined by FmHA, less prior liens, if any. The conveyance will be processed as follows:

* * * * *

(2) * * *

If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value, less prior liens (if any), and the borrower will determine if he/she wishes to make a new offer on that basis. * * *

* * * * *

(h) * * *

(1) When the FmHA account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability," and the statement must be signed by the servicing official.

* * * * *

(5) When the FmHA account is not satisfied and the borrower not released from liability, the account balance, after deducting the "asis" market value and prior liens, if any, will be accelerated utilizing Exhibit F of this subpart (available in any FmHA office.)

* * * * *

13. In § 1955.11, the first sentence of paragraph (b)(1) is revised to read as follows:

§ 1955.11 Conveyance of property to FmHA by trustee in bankruptcy.

(b) * * *

(1) FmHA may pay any necessary and proper fees approved by the bankruptcy court in connection with the conveyance. * * *

* * * * *

14. In § 1955.15, paragraph (a)(2)(i) is revised, (b)(3) is added, (d)(4) is revised, the fourth sentence of (e)(2) is revised, (f)(3) is revised, and the following two sentences are added to (f)(5) to read as follows:

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

(a) *Authority.*

(2) * * *

(i) The State Director or District Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA secured debt does not exceed their respective loan approval authority. The State Director is authorized to approve or disapprove foreclosure of I&D, Shift-In-Land-Use (Grazing Association), loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

* * * * *

(b) * * *

(3) *Historic preservation.* If it is likely that FmHA will acquire title to the property as a result of the foreclosure, and the structure(s) on the property will be in excess of 50 years old at the time of acquisition or meet any of the other criteria contained in § 1955.137(b) of Subpart C of Part 1955 of this chapter, steps should be initiated to meet the requirements of the National Historic Preservation Act as outlined in § 1955.137(b). Formal steps should not be initiated until the conclusion of all appeals, however, any such documentation required may be completed when the problem case report is prepared. This action should eliminate delays in selling the property after acquisition.

* * * * *

(d) * * *

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be processed in accordance with the FMI. When an official statement of account is not required, account balances and recapture information may be obtained from the field office terminal.

* * * * *

(e) * * *

(2) * * * At the time indicated by OGC in the foreclosure instructions, Form FmHA 1951–6, "Borrower Account Description Flag," will be processed in accordance with the FMI.

(f) * * *

(3) *Notice of judgment.* In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA 1962–20, "Notice of Judgment," will be processed in accordance with the FMI. This will establish a judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

* * * * *

(5) * * * Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

* * * * *

15. In § 1955.18, the first sentence of paragraph (a) is revised, the introductory text of paragraph (b) and paragraph (c), and paragraph (d) are revised as follows:

§ 1955.18 Actions required after acquisition of property.

(a) *Reporting acquisition.* When real or chattel property is acquired by the Government, the servicing official will process Form FmHA 1955–3, "Advice of Property Acquired," and Form FmHA 1955–3A, "Acquired Property-Maintenance," or Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired," and Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," (if the project has had rental assistance units) according to the FMI immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. * * *

* * * * *

(b) *Existing lease.* If property acquired by FmHA is under an existing written lease, a copy of the lease will be placed in the case file. Any oral lease will be reduced to writing on Form FmHA 1955–20, "Lease of Real Property." A lease account will be established in the Finance Office records. If an existing lease is terminated by foreclosure, a new lease may be considered pursuant to § 1955.66 of Subpart B of Part 1955 of this chapter, except for MFH property for which leasing as a project is generally not authorized.

* * * * *

(c) *Existing management agreement.* For MFH and C&BP, if a property is being managed on behalf of the borrower prior to acquisition, the State Director will request the assistance of the National Office in determining if the agreement should be canceled or extended. In any event, management services should be obtained as soon as possible in accordance with § 1955.65 of Subpart B of Part 1955 of this chapter.

* * * * *

(d) *Inventory account.* The Finance Office will establish an inventory account under the Property ID Number assigned. The value of the property entered into the inventory account will be the market value as of the date acquired (less outstanding liens if the property was acquired subject to any liens).

* * * * *

16. In § 1955.20, paragraph (d) is revised to read as follows:

§ 1955.20 Acquisition of chattel property.

* * * * *

(d) *Appraising chattel property.* Prior to the sale, the servicing official will appraise chattel property using Form FmHA 440–21, "Appraisal of Chattel Property." If a qualified appraiser is not available to appraise chattel property, the State Director may obtain an appraisal from a qualified source outside FmHA by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office.)

* * * * *

Subpart B—Management of Property

17. Section 1955.53 is revised by removing all paragraph designations, revising the definitions of "Contracting Officer," "Suitable property" and "Surplus property," removing the definition of "Unsuitable property" and adding in alphabetical order definitions of "Nonprogram (NP) property" and "Program property" to read as follows:

§ 1955.53 Definitions.

* * * * *

Contracting Officer (CO). CO means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized representatives of the CO acting within the limits of their authority as delegated by the CO.

* * * * *

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards, however, is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

* * * * *

Program property. SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

* * * * *

Suitable property. Property, other than SFH or MFH, that could be used to carry out the objectives of an FmHA loan program with financing provided through that program.

Surplus property. Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as contained in the definition of "CONACT or CONACT PROPERTY" of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

* * * * *

18. Section 1955.54 is revised to read as follows:

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

19. In § 1955.55, paragraph (b)(2)(iii) is revised, paragraph (d) is revised and redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

* * * * *

(b) * * *

(2) * * *

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

(d) *Emergency advances where liquidation is pending.* Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs.* Income received from the property will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Expenditures will be charged to the borrower's account as a recoverable cost. Costs will be paid by preparing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and processing Form FmHA 2024–1, "Miscellaneous Payment System," or Form AD 838, "Purchase Order" and processing Form FmHA 838B, "Invoice-Payment Certification," as appropriate, according to FmHA Instruction 2024–A (available in any FmHA office) and the respective FMI's.

20. Section 1955.57 is added to read as follows:

§ 1955.57 Real property containing underground storage tanks.

Within 30 days of acquisition of real property into inventory, FmHA must report certain underground storage tanks to the State agency identified by the Environmental Protection Agency (EPA) to receive such reports. Notification will be accomplished by completing an appropriate EPA or alternate State form, if approved by EPA. A State Supplement will be issued providing the appropriate forms required by EPA and instructions on processing same.

(a) Underground storage tanks which meet the following criteria must be reported:

(1) It is a tank, or combination of tanks (including pipes which are

connected thereto) the volume of which is ten percent or more beneath the surface of the ground, including the volume of the underground pipes; and

(2) It is not exempt from the reporting requirements as outlined in paragraph (b) of this section; and

(3) The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance; or

(4) The tank contained a regulated substance, was taken out of operation by FmHA since January 1, 1974, and remains in the ground. Extensive research of records of inventory property sold before the effective date of this section is not required.

(b) The following underground storage tanks are *exempt* from the EPA reporting requirements:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) Pipeline facilities (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968;

(ii) The Hazardous Liquid Pipeline Safety Act of 1979; or

(iii) For an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in paragraph (b)(4) (i) or (ii) of this section;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

(c) A copy of each report filed with the designated State agency will be forwarded to and maintained in the State Office by program area.

(d) Prospective purchasers of FmHA inventory property with a reportable underground storage tank will be informed of the reporting requirement and provided with a copy of the form filed by FmHA.

(e) In a State which has promulgated additional underground storage tank reporting requirements, FmHA will comply with such requirements and a State Supplement will be issued to provide necessary guidance.

(f) Regardless of whether an underground storage tank must be reported under the requirements of this section, if FmHA personnel detect or believe there has been a release of petroleum or other regulated substance from an underground storage tank on an inventory property, the incident will be reported to the appropriate State Agency, the State Environmental Coordinator and appropriate program chief. These parties will collectively inform the servicing official of the appropriate response action.

§ 1955.63 [Amended]

21. In § 1955.63, paragraph (c) is amended by changing the terms "suitable" and "unsuitable" to "program" and "nonprogram," respectively, wherever mentioned in the paragraph.

§ 1955.64 [Amended]

22. In § 1955.64, paragraph (a)(1) is amended by changing the term "Unsuitable" to "Nonprogram" in the fourth sentence.

23. In § 1955.65, paragraph (c)(4) is revised as follows:

§ 1955.65 Management of inventory and/or custodial real property.

* * * * *

(c) * * *

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form AD 838 or SF 1034 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate, in accordance with the respective FMI's. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager by use of SF 1034 or AD 838 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate, according to the respective FMI's.

* * * * *

24. In § 1955.66, paragraph (b) is revised to read as follows:

§ 1955.66 Lease of real property.

* * * * *

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as a program applicant for purchase of the property (if the property is suited for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

* * * * *

25. In § 1955.68, paragraphs (a) and (c) are revised to read as follows:

§ 1955.68 Payment of taxes.

* * * * *

(a) *Suitable or program property.* When property is suited for program purposes, the servicing official will prepare SF 1034 and process Form FmHA 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

* * * * *

(c) *Nonprogram (NP) housing property.* When property is classified as NP and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

Subpart C—Disposal of Inventory Property

26. Section 1955.102 is revised to read as follows:

§ 1955.102 Policy.

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that it will enable a qualified applicant for one of Farmers Home Administration's (FmHA's) loan programs to meet the objectives of the loan program, preference will be given to program applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: A dwelling which secured an Emergency loan may be sold as a Single-Family Housing (SFH) unit if suited for that program; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

27. Section 1955.103 is revised by removing all paragraph designations, revising the definitions of "Decent, safe and sanitary housing (DSS)," "Eligible terms," "Ineligible terms," "Regular FmHA sale," "Suitable property," and "Surplus property," removing the definition of "Unsuitable property," and adding in alphabetical order definitions of "Nonprogram (NP) property," "Nonprogram (NP) terms," "Program property," "Program terms," and "Servicing official," to read as follows:

§ 1955.103 Definitions.

* * * * *

Decent, safe and sanitary (DSS) housing. Standards required for the sale of Government acquired SFH, MFH and LH structures acquired pursuant to the Housing Act of 1949, as amended. "DSS" housing unit(s) are structures which meet the requirements of FmHA as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements:

(1) Are structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems,

(4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this chapter, and

(5) Are safe; that is, a hazard does not exist that would endanger the safety of dwelling occupants.

Eligible terms. Credit terms, for other than SFH or MFH property sales, prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For SFH and MFH properties, see the definition of "Program terms."

Ineligible terms. Credit terms, for other than SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as surplus. Loans made on ineligible terms are classified as Nonprogram (NP) loans and are serviced accordingly. For SFH and MFH properties, see the definition of "Nonprogram (NP) terms."

* * * * *

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards, however is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

Nonprogram (NP) terms. Credit terms for SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as nonprogram (NP). Loans made on NP terms are classified as NP loans and are serviced accordingly. For property other than SFH and MFH, see the definition of "Ineligible terms."

* * * * *

Program property. SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

Program terms. Credit terms for SFH or MFH property sales, prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For property sales other than SFH and MFH, see the definition of "Eligible terms."

Regular sale. Sale by FmHA employees or real estate brokers other than by sealed bid, auction or negotiation.

* * * * *

Servicing official. For loans to individuals, as defined in § 1955.53 of Subpart B of Part 1955 of this chapter, the servicing official is the County Supervisor. For all other loans, excluding insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

Suitable property. Property, other than SFH or MFH, that can be used to carry out the objectives of an FmHA loan program with financing provided through that program.

Surplus property. Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as contained in the definition of "CONACT or CONACT PROPERTY" of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

* * * * *

28. Section 1955.104 is revised to read as follows:

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible, consistent with program objectives and available resources.

(1) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(2) Except as provided in paragraph (a)(1) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(3) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(4) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7 or above, who is

determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

(b) *Responsibility.* (1) National Office program directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and insuring compliance with FmHA regulations.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State Supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The servicing official has the authority to offer for sale, accept and/or reject bids or offers for inventory property regardless of amount. Any credit request, however, must be approved by an approval official within his/her respective loan approval authority as outlined in the applicable Exhibits of FmHA Instruction 1901-A (available in any FmHA office).

§ 1955.111 [Removed]

§ 1955.110 [Redesignated as § 1955.111 and Reserved]

29. Section 1955.111 is removed, § 1955.110 is redesignated as § 1955.111, § 1955.110 is reserved for future use, and §§ 1955.111, 1955.112, 1955.113, 1955.114, 1955.115, 1955.116, 1955.117, 1955.118, and 1955.119 are revised to read as follows:

§ 1955.111 Sale of real estate that secured RH loans (housing).

Section 1955.112 through 1955.119 of this subpart pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA.* Sales customarily will be made by FmHA personnel in accordance with §§ 1955.114 and 1955.115 of this subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method is used. No earnest money will be collected in connection with sales by FmHA. For MFH, this method will always be used unless another method is authorized by the Assistant Administrator, Housing.

(b) *Real estate brokers.* The County Office will utilize the services of real estate brokers for regular sales when there are five or more properties in inventory at any one time during the calendar year. When real estate brokers are used, first consideration will be given to utilizing such services under an exclusive broker contract as provided for in § 1955.130 of this subpart. Only when it is determined that an exclusive broker contract is not practicable, will the services of real estate brokers under an open listing agreement be utilized. The use of real estate brokers in offices having less than five properties in inventory at any one time during the calendar year is optional provided staffing and workload permit diligent and timely sales by FmHA. When broker services for SFH are utilized, the FmHA office will not conduct direct sales, but will refer inquiries to the broker or list of participating brokers. However, if FmHA has been approached by a potential buyer desiring to purchase a specific property and a sales contract has been accepted, the property will not be listed for sale with real estate brokers. Earnest money held by real estate brokers will be used to pay the purchaser's closing costs with any balance of the costs to be paid by the purchaser. Any required earnest money deposit is exclusive of any required credit report fee. Brokers may only be used for MFH with authorization of the Assistant Administrator, Housing.

(c) *Sealed bid or auction.* The use of sealed bids or auctions is an effective method by which to sell inventory property. If the State Director determines that NP SFH property has been given adequate market exposure and that diligent sales efforts have not produced buyers, or under unusual circumstances as outlined in § 1955.115(a)(1) of this subpart, he/she will authorize sale by sealed bid or auction unless additional sales methods appear more prudent. Program SFH property will be sold by regular sale *only,* unless the Assistant Administrator, Housing, authorizes sale by sealed bid or auction. The State Director will request such authorization when all reasonable marketing efforts fail to produce buyers and the conditions of § 1955.114(a)(6) of this subpart have been met. The case file, including documentation of all marketing efforts, will be forwarded to the Assistant Administrator, Housing, ATTN: Single Family Housing Servicing and Property Management (SFH/SPM) Division, to request authority to sell program property by sealed bid or auction. The decision to utilize a sealed bid or auction must be carefully weighed when the property is located in a subdivision, since the resultant sale may have an adverse effect on surrounding property values. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

§ 1955.113 Price (housing).

Real property will be offered or listed for its present market value, as adjusted by any administrative price reductions provided for in this section. Market value will be based upon the condition of the property at the time it is made available for sale. However, when a section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or market value, less administrative price reductions, if any.

(a) *SFH price reduction.* SFH property will be appraised at any time additional market data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. For ease in computing dates for administrative price reductions, each month is assumed to have thirty days. The following schedule of administrative price reductions will be followed:

(1) *Program property.* If program property has not sold after being actively marketed at the current appraised value for at least 45 days during which time program applicants have exclusive rights to purchase the property, plus an additional 30 days to any offeror, the price will be administratively reduced by 10 percent of the appraised value. During the first 45 days after the price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If at the end of this 75-day period the property remains unsold, a second price reduction of 10 percent of the appraised

value will be made. During the first 45 days after the second price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If the property does not sell within 75 days of the second price reduction, further guidance is provided in § 1955.114(a)(6) and Exhibit D (available in any FmHA office) of this subpart.

(2) *Nonprogram (NP) property.* If NP property has not been sold after being actively marketed for 45 days, the price will be administratively reduced by 10 percent of the appraised value. If the property remains unsold after an additional 45-day period of active marketing, one further price reduction of 10 percent of the appraised value will be made. If the property does not sell within 45 days of the second price reduction, further guidance is provided in § 1955.115(a)(1) and Exhibit D (available in any FmHA office) of this subpart.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions in price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

§ 1955.114 Sales steps for program property (housing).

Program property will be sold by regular sale unless the Assistant Administrator, Housing, authorizes another method. If the State Director determines that program property has been given adequate market exposure and that diligent sales efforts including the use of real estate brokers has not produced purchasers, the State Director may request the Assistant Administrator, Housing, to authorize sale by sealed bid or public auction as specified in § 1955.112(c) of this subpart.

(a) *Single family housing (SFH).* Sale prices will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property or list it with real estate brokers for regular sale under the provisions of § 1955.112 of this subpart. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for program property

(1) The following provisions apply to all offers to purchase SFH inventory property:

(i) Program property will be available for purchase only by program applicants for the first 45 days from the date of the initial offering or listing, and for the first 45 days following the date of any reduction in price. During these 45-day period(s), offers from others may be received and held until the first business day following the 45-day period (the 46th day) when any such offer(s) will be considered as received on the 46th day along with offers received on that same (46th) day. After the expiration of each 45-day exclusive period for program applicants, program property may be purchased by offerors requesting credit on program terms, nonprogram (NP) terms or for cash in the order of priority set forth in paragraph (a)(3) of this section.

(ii) In regular sales, an acceptable offer *must* be for at least the sale price. No offer for less than the sale price will be considered, accepted or held. Offers will be considered as acceptable or unacceptable independent of any accompanying credit request (on program or NP terms).

(iii) All offers will be date-stamped when received. Selection of equally acceptable offers, considering offers in the category order outlined in paragraph (a)(3) of this section, received on the same business day will be made by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as back-up offers pending sale to the successful offeror, unless the offeror has specifically noted on the offer that it may not be held as a back-up offer.

(iv) Offers may be *received* and *accepted* at any time after the effective date the property is available for sale unless listed with real estate brokers under an exclusive broker contract. For properties listed under an exclusive broker contract, offers may be *received* at any time after the effective date the property is listed for sale, however, will *not* be *considered* or *accepted* until five business days after the effective date the property is available for sale or any reduction in price. Offers received during the five-business-day period will be considered to be received at the same time on the 6th day along with offers received on the same (6th) day.

(v) If an offer subject to FmHA financing is accepted, and the offeror's credit request is later denied, the next offer (if any) will be accepted regardless of whether the rejected applicant appeals the adverse decision (NP applicants do not receive appeal rights). In cases involving program property, if no back-up offers are on hand, the property will be reoffered/relisted for sale utilizing the balance of any outstanding retention period. Property will not be held off the market pending the outcome of an appeal.

(2) *Effective date and method of offering.* When ready for sale, each property will be offered for sale by use of Form FmHA 1955–43 unless FmHA has on hand a signed offer from a program applicant to purchase a specific program property or an offer from any offeror to purchase a specific NP property. The date the form is posted or mailed to real estate brokers is the effective date the offer for sale has begun.

Listings will provide for sales on program and NP terms, as appropriate.

(3) *Priority of offers.* For program properties, acceptable offers received after the 45-day retention period specified in paragraph (a)(1)(i) of this section have priority in the order given in paragraphs (a)(3) (i), (ii), (iii) and (iv) of this section. For NP properties, acceptable offers have priority in the order given in paragraphs (a)(3) (ii), (iii) and (iv) of this section. Program applicants may purchase NP property, however, credit may only be extended on NP terms.

(i) Offers with requests for credit on program terms. An offer from an applicant requesting credit on program terms in excess of the sale price will be considered as equally acceptable with other acceptable offers from program applicants and will be sold for the sale price.

(ii) Cash offers, in descending order from highest to lowest, provided the cash offer is higher than any other offer which falls into the parameters of paragraph (a)(3)(iii) of this section multiplied times the current cash preference percentage listed in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iii) Offers with requests for credit on NP terms in descending order from highest to lowest, for *more* than the sale price. An offer with a request for credit in excess of the market value of the property will not be accepted. If an offer of this type is received, the offeror will be given the opportunity to reduce the credit request to the market value (or lower) with no change to be made in the offered price.

(iv) Offers with requests for credit on NP terms for the sale price.

(4) *Back-up offers and notification to offerors.* Back-up offers will be taken in accordance with paragraph (a)(1)(iii) of

this section. County offices utilizing the services of real estate brokers will advise the brokers of changes in the status of the property. County offices not utilizing real estate brokers will advise offerors of changes in the status of the property utilizing Exhibit E of this subpart (available in any FmHA office) or similar format. Use of Exhibit E is optional in offices utilizing real estate brokers.

(5) *Finalizing sales.* Credit sales on program terms will be made in accordance with § 1955.117 of this subpart and Subpart A of Part 1944 of this chapter. Cash sales or credit sales on NP terms will be made in accordance with § 1955.118 of this subpart.

(6) *Unsold property.* If program property remains unsold after eight months of active marketing, the case file, with documentation of all marketing efforts, will be forwarded to the State Office for review with a recommendation of future sales efforts. The State Director will determine whether a request should be made to the Assistant Administrator, Housing, to sell the property by sealed bid or auction, or whether additional guidance such as, but not limited to advertising, reappraisal, offering a special effort sales bonus, or 20-year amortization factor (with balloon after 10 years) on NP financing may facilitate a sale.

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director, or designee. The sale date/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official, and for program applicants, given appeal rights in accordance with Subpart B of Part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other FmHA employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as a back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer, the selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA 1955-40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization of the Assistant Administrator, Housing.

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations or public bodies will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner on units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD-622, "Notice of Preapplication Review Action." A preapplication with the information outlined in Exhibit A-6 of Subpart E of Part 1944 of this chapter, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator, Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of Subpart E of Part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of "project" set forth in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suited for the SFH program, it may be offered for sale as a SHF unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to a program RH applicant on *program terms only*—not for cash or on NP terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or through real estate brokers) must state this restriction.

§ 1955.115 Sales steps for nonprogram (NP) property (housing).

The appropriate FmHA office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect changes in market conditions, repairs and improvements, if any. Form FmHA 1955-43 for SFH and 1955-40 for MFH will be completed to offer the property for sale. The advertising requirements and deed restrictions in § 1955.116 of this subpart apply if the property does not meet FmHA DSS standards.

(a) *Single family housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash or on NP terms as provided in § 1955.118 of this subpart. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for NP properties.

(1) *Sale by sealed bid or auction.* If a NP property has not sold within 150 days after being offered for sale, the inventory case file with documentation of marketing efforts will be submitted to the State Director. The State Director will authorize sale by sealed bid or auction in accordance with §1955.112(c) of this subpart unless additional sales methods appear more prudent. Use of the sealed bid or auction method may be considered as an initial sales effort

under special or unusual circumstances such as, but not limited to, structures which have been substantially destroyed by fire or other causes.

(2) *Sale as chattel.* If efforts to sell NP property by sealed bid or auction prove unsuccessful, the structure(s) may be sold as chattel (for chattel or salvage value, as appropriate) when authorized by the State Director. When the structure is to be sold as chattel (exclusive of land) further guidance is provided in §§ 1955.121, 1955.122 and 1955.141(b) of this subpart. If no offer is received, the structure(s) may be demolished and removed from the site and then the site offered for sale. If this method is utilized, FmHA will attempt to have the structure removed in exchange for the salvageable materials by contract, otherwise, will solicit for contracts to have the structure removed in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(3) *Sale of vacant land.* When FmHA has vacant land in inventory which was security for an SFH loan, the land will be sold in accordance with this subparagraph. When the lot meets the requirements of Subpart A of Part 1944 of this chapter, and a program applicant desires to purchase the lot and construct a dwelling, a credit sale will not be made. Instead, one section 502 loan will be made which will include funds for the purchase of the lot and construction of a dwelling. Otherwise, the lot will be sold for cash or on NP terms with a loan not to exceed ten years in term and amortization.

(b) *Multiple family housing.* Sales steps will be the same as for program MFH property as provided in § 1955.114(b) of this subpart except that sales must be for cash or on NP terms as set forth in § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell NP MFH property, authority to use that method of sale must be requested from the Assistant Administrator, Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review.

§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

For real property (exclusive of improvements) which is unsafe, refer to § 1955.137(e) of this subpart for further guidance. For all other housing inventory property which does not meet decent, safe and sanitary (DSS) standards, the provisions of this section apply.

(a) *Notices and advertising.* If the inventory property has a single family dwelling or MFH unit thereon which does not meet DSS standards as defined in § 1955.103 of this subpart, but which could meet such standards through the repair or renovation activities of the future owner, any "Notice of Real Property For Sale," "Notice of Sale," or other advertisement used in conjunction with advertising the property for sale must include the following language which is contained in Form FmHA 1955–44, "Notice of Residential Occupancy Restriction":

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which this property will be conveyed will contain a covenant restricting the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is repaired, renovated or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480. The property must be repaired and/or renovated as follows:*.

* For advertisements, the sentence preceding the asterisk may be deleted and replaced with the following, or similar sentence: "Contact FmHA (or any real estate broker/name of exclusive broker) for a list of items which must be repaired/renovated." For notices other than advertising, insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

—Replace flooring and floor joists in kitchen and bathroom.

—Drill new well to provide for an adequate and potable water supply.

—Hook-up to community water and sewage system now being installed.

—Provide a functionally adequate, safe and operable * system. * Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.

—Install *. * Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.

—Install R-* insulation in basement walls or ceiling, R-* insulation in attic, and storm windows/doors throughout. * Insert appropriate R-Values to meet Thermal Performance Standards.

(b) *Sale agreements.* If a housing structure in inventory does not meet DSS standards, Form FmHA 1955–44 must be attached to Forms FmHA 1955–45 or FmHA 1955–46, as appropriate, to provide notification of the deed restriction and required repairs/renovations before the dwelling can be used for residential purposes.

(c) *Quitclaim Deed.* The following, the original of Form FmHA 1955–44, or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the Quitclaim Deed for properties which do not meet DSS standards at the time of sale but which could through the repair/renovation activities of the future owner:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to the Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated as follows: *."

* Insert the same items referenced in the listing notice(s) and sale agreement which are necessary to make the dwelling unit(s) meet DSS standards.

(d) *Release of restrictive covenant.* Upon request of the property owner for a release of the restrictive covenant, FmHA will inspect the property to ensure that the repairs/renovations outlined in the restrictive covenant have been properly completed or the structure(s) razed. A State Supplement outlining the procedure for releasing the restrictive covenant will be issued with the advice of OGC.

§ 1955.117 Processing credit sales on program terms (housing).

The following provisions apply to all credit sales on program terms:

(a) *Offers.* Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales. The contract is accepted prior to processing Form FmHA 410–4, "Application for Rural Housing Assistance (Non-Farm Tract)," for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA regulations pertaining to the type of credit being extended will be followed in making credit sales on program terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security, less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 3 percent of the purchase price as a cash downpayment. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and use restrictions specified by the respective program requirements.

(c) *Approval.* Forms FmHA 1940–1 or FmHA 1944–51, as appropriate, will be used to approve a credit sale even though no obligation of funds is required.

(d) *Downpayment.* When a downpayment is made, it will be collected at closing, identified by property identification number, purchaser's name and case number (and project number for MFH sales) and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH credit sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

§ 1955.118 Processing cash sales or credit sales on NP terms (housing).

Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser. Proceeds will be remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office). The following provisions apply to credit sales on NP terms:

(a) *Offers.* Form FmHA 1955–45 or FmHA 1955–46, as appropriate, will be used to document the offer and acceptance. Contract acceptance is made prior to processing a request for credit on NP terms.

(b) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability and creditworthiness. Standards forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type involved.

(c) *Approval.* Forms FmHA 1940–1 or FmHA 1944–51, as appropriate, will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(d) *Downpayment.* For credit sales, a downpayment will be collected at closing and will be remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office). For SFH properties, purchasers who fall into the category specified in § 1955.118(f)(1)(i) of this subpart (owner/occupants), a downpayment of not less than 2 percent is required. For purchasers who fall into the category specified in § 1955.118(f)(1)(ii) of this subpart (nonoccupant/investors), a down payment of not less than 5 percent is required. For MFH properties, a downpayment of not less than 10 percent is required.

(e) *Interest rate.* The NP SFH interest rate will be charged on all credit sales of SFH property on NP terms. The Section 515 RRH interest rate plus ½ percent will be charged on all other types of housing credit sales. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(f) *Term of note.* The balance of the purchase price will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *SFH.* (i) When a purchaser does not own an adequate home and intends to occupy the house, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (f)(1)(i) of this section, the note amount will be amortized for not more than 10 years. However, if the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(2) *MFH.* No more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale in which case the note amount may be amortized using up to a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(g) *Modification of security instruments.* If applicable to the type property being sold, modification of security instruments may be made. On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted. Special care should be taken to ensure that only the aforementioned covenants are deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and FmHA initialing the changes.

(h) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) The purchaser will pay his/her own closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser. Any closing costs which are legally or customarily paid by the seller will be paid by FmHA from the downpayment.

(3) The County Supervisor or District Director will provide the closing agent

with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(i) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(j) *Classification.* Credit sales on NP terms will be classified as NP loans and serviced accordingly.

§ 1955.119 Payment of points (housing).

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a non-FmHA loan, the County Supervisor may authorize the payment by FmHA of not more than three points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will *not* be paid to reduce the purchaser's interest rate. The payment will be deducted from the funds to be received by FmHA at closing.

30. Section 1955.127 is revised to read as follows:

§ 1955.127 Selection and use of contractors to dispose of inventory property.

Sections 1955.128 through 1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instruction 2024–A (available in any FmHA office) is applicable for procurement of nonpersonal services.

31. Section 1955.130 is revised to read as follows:

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed in Exhibit D of FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they do business.

(a) *Type of listings.* The State Director may authorize use of exclusive listings during any calendar year. Since the Agency receives many more marketing services for its commission dollar and saves time listing the property with only one broker, it is strongly recommended that all County Offices be authorized the use of exclusive brokers.

(1) *Exclusive broker contract.* An exclusive broker contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for specific property or type of property. Criteria will be specified in the solicitation together with a numerical weighting system to be used (usually 1—100). Responses will be calculated on the basis of the criteria such as personal qualifications, membership in Multiple Listing Service (MLS), previous experience with FmHA sales, advertising plans, proposed innovative promotion methods, and financial capability. The responsibilities of the broker under an exclusive broker contract exceed those of the open listing agreement and therefore, an exclusive broker contract is the preferred method of listing properties.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed under the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, or a notice sent to all real estate brokers in the counties served by the FmHA office, informing brokers that sales services are being requested. The advertising will be substantially similar to the example given in Exhibit B of this subpart (available in any FmHA office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property. When this method is used, the FmHA office is responsible for ensuring that adequate advertising is performed to effectively market the property.

(b) *Listing notices.* Forms FmHA 1955–40 or FmHA 1955–43, as appropriate, will be used to provide brokers with notice of initial listing, withdrawal, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* All offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Priority rules for specific categories of property are:

(1) *Program SFH.* See § 1955.114(a) of this subpart.

(2) *Program MFH.* Offers will be considered from program applicants only.

(3) *NP SFH.* See § 1955.115(a) of this subpart.

(4) *NP MFH.* See § 1955.115(b) of this subpart.

(5) *Suitable CONACT.* See § 1955.106 of this subpart.

(6) *Surplus CONACT.* See § 1955.107 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale.

(e) *Earnest money.* The broker will collect earnest money in the amount specified in paragraph (e)(1) of this section when a sale contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA. When a contract is cancelled because FmHA rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single family properties or MFH projects of 2 to 5 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA as full liquidated damages and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office) for application to the General Fund.

(f) *Commission*—(1) *Amount*—(i) *Exclusive broker contract.* FmHA may not set the commission rate in an exclusive broker solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any broker who submits an offer with a commission rate lower than the typical rate for such services in the area must provide documentation that thay have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy.

(ii) *Open listing agreement.* A uniform fee or commission schedule, by property type, will be established by the servicing official within a given sales area. The commission rate to be paid will be the typical rate for such services in the sales area and will not exceed or be lower than commissions paid for similar types of services provided by the broker to other sellers of similar property.

(2) *Special effort sales bonuses.* The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property.

(3) *Payment of commission.* Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving FmHA credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving FmHA credit, one-half the respective commission will be paid to the exclusive broker. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA official by completing Form AD–838 and processing Form FmHA 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Form FmHA 1955–42. In addition, all brokers participating in the sale of property shall sign the nondiscrimination certification on Form FmHA 1955–45.

§ 1955.131 [Amended]

32. In § 1955.131, paragraph (b) is revised to read as follows:

* * * * *

(b) *Commission.* FmHA may not set the commission rate in an auctioneer solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any offeror that submits an offer with a commission rate lower than the typical rate for such services in the area must include documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA official completing Form AD–838 and processing Form FmHA 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

* * * * *

§ 1955.134 [Amended]

33. In § 1955.134, paragraph (b) is revised to read as follows:

* * * * *

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made, in accordance with applicable loan making regulations for the respective loan program, to correct defects.

34. Section 1955.135 is revised to read as follows:

§ 1955.135 Taxes on inventory property.

Where FmHA owned property is subject to taxation, taxes and assessment installments will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Forms FmHA 1955–45 or FmHA 1955–46. The purchaser will be responsible for paying all taxes and assessment installments accrued after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only assessment installments for property improvements (water, sewer, curb and gutter, etc.) accrued as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, payment of taxes and assessment installments due to be paid by FmHA will be accomplished in the following order:

(a) Deducted from any cash proceeds FmHA is to receive as a result of the sale;

(b) Paid by voucher to the local taxing authority if they will accept payment at that time;

(c) Deducted from the sale price (which may result in a promissory note less than the sale price), if acceptable to the purchaser; or

(d) Paid by voucher to the purchaser. If appropriate, for program purchasers, this money may be placed in a Supervised Bank Account until the taxes can be paid.

35. In § 1955.137, paragraph (a)(2)(ii)(A) is revised, the second sentence of paragraph (3)(i) is revised, and new paragraphs (d) and (e) are added to read as follows:

§ 1955.137 Real property located in special areas or having special characteristics.

(a) * * *

(2) * * *

(ii) * * *

(A) When sending Forms FmHA 1955–40, FmHA 1955–43, or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A of this subpart (available in any FmHA office) may be used for this purpose.

* * * * *

(3) * * *

(i) * * * Flood insurance must be provided at closing of loans on program/eligible and nonprogram (NP)/ineligible terms. * * *

* * * * *

(d) *Notification to purchasers of inventory property with reportable underground storage tanks.* If FmHA is selling inventory property containing a storage tank(s) which was reported to the Environmental Protection Agency (EPA) pursuant to the provisions of § 1955.57 of Subpart B of Part 1955 of this chapter, the potential purchaser(s) will be informed of the reporting requirement and provided a copy of the report filed by FmHA.

(e) *Real property that is unsafe.* If FmHA has in inventory, real property, exclusive of any improvements, that is unsafe, that is it does not meet the definition of "safe" as contained in § 1955.103 of this subpart and which cannot be feasibly made safe, the State Director will submit the case file, together with documentation of the hazard and a recommended course of action to the National Office, ATTN: appropriate Assistant Administrator, for review and guidance.

36. In § 1955.138, the introductory text and paragraph (a) are revised to read as follows:

§ 1955.138 Property subject to redemption rights.

If, under State law, FmHA's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) A credit sale of a program or suitable property subject to redemption rights may be made to a program applicant when the property meets the standards for the respective loan program. In areas where State law does not provide for full recovery of the cost of repairs during the redemption period, a program sale is generally precluded unless the property already meets program standards.

* * * * *

37. In § 1955.139, paragraph (a)(2), and the first sentence of (a)(3)(iv) are revised to read as follows:

§ 1955.139 Disposition of real property rights.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not change the classification from program/suitable to NP or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) * * *

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not change program/suitable property to NP or surplus. * * *

* * * * *

38. Sections 1955.140, 1955.141, 1955.142 and 1955.143 are revised to read as follows:

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is classified surplus because it is larger than a family-size farm, the State Director will subdivide the property into one or more suitable farm tracts and sell the suitable tracts to program applicants in accordance with § 1955.106 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of property must not change its character from program/suitable to NP or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land.

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block if it is determined this will facilitate the sale.

§ 1955.141 Transferring title.

(a) *Real property.* Real property will be conveyed by Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director or duly designated Acting State Director. This authority may not be redelegated except in Puerto Rico, where the State Director may delegate this authority to a District Director. A District Director in Puerto Rico may not redelegate this authority except to a duly designated Acting District Director. FmHA or an approved closing agent may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by use of Standard Form 1034 and Form FmHA 2024–1 and charged to the inventory account or may be paid from any down payment where funds are being disbursed by the closing agent.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, executed by the Country supervisor, District Director, or State Director.

(c) *Additional real property documentation.* For MFH property, documentation will be in accordance with appropriate program procedure. For SFH program real property sold to program applicants or whenever required, the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and/or sewage systems are functional and adequate for property not being served by public water and/or sewer systems.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase, the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to program applicants purchasing MFH properties in accordance with the provisions of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this chapter respectively.

§ 1955.142 Reporting sale.

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will process Form FmHA 1955–50, "Advice of Inventory Property Sold," or for MFH, Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner.

§ 1955.143 Report of inventory not sold.

Properties which are subject to a sale moratorium are excluded from this requirement. Applicable property reports due in the National Office will be grouped together and submitted simultaneously by the State Director to the appropriate Assistant Administrator each March 31st and September 30th unless the servicing official determines that earlier guidance is appropriate.

(a) *SFH properties*—(1) *Program property.* After the requirements of § 1955.114(a)(6) of this subpart are met, and the property has been in inventory for one year, a report will be submitted to the Assistant Administrator, Housing. The submission will include the case file, documentation of marketing efforts and a request to sell the property by sealed bid or auction in accordance with § 1955.112(c) of this subpart and/or provide a recommendation for future sales efforts.

(2) *NP property.* After the requirements of § 1955.115(a)(1) of this subpart are met, and the property has been in inventory for nine months, a report will be submitted to the Assistant Administrator, Housing. The submission will include the case file, documentation of marketing efforts, and a recommendation for future sales efforts.

(b) *Properties other than housing.* For any real or chattel property not sold within 18 months after acquisition (6 months for chattel), the County Supervisor or District Director, as appropriate, will send the case file, documentation of marketing efforts and a recommendation for future sales efforts to the State Director for review. The State Director or appropriate program official will review the submission and provide any additional recommendations. If the property is not sold within an additional 6 months (3 months for chattels), the State Director will forward the case file, documentation of marketing efforts, and a recommendation for future sales efforts to the appropriate Assistant Administrator for guidance.

39. In § 1955.144, the title is revised and the first sentence of (a) is revised to read as follows:

§ 1955.144 Disposal of NP or surplus property to, through, or acquisition from other Agencies.

(a) * * * If NP or surplus real or chattel property cannot be sold (or only token offers are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). * * *

40. Section 1955.145 is revised to read as follows:

§ 1955.145 Land acquisition to effect sale.

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be NP due to location and where it is economically feasible to relocate the structure thereby making it a program property, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining NP parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined NP for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make NP property a program property, if economically feasible.

41. In § 1955.146, paragraph (a) is revised to read as follows:

§ 1955.146 Advertising.

(a) *General.* When property is being sold by FmHA or through real estate brokers, it is the servicing official's responsibility to ensure adequate advertising of property to achieve a timely sale. The primary means of advertisements are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notice using Form FmHA 1955–41, "Notice of Sale," and notification of known interested parties. Other innovative means are encouraged, such as the use of a bulletin board to display photographs of inventory properties for sale with a brief synopsis of the property attached; posting Forms FmHA 1955–40 or FmHA 1955–43, as appropriate, in the reception area to attract applicant and broker interest; posting notices of sale at employment centers; door-to-door distribution of sales notices at apartment complexes; radio and/or television spots; group meetings with potential applicants/investors/real estate brokers; and advertisements in magazines and other periodicals. If FmHA personnel are not available to perform these services, FmHA may contract for such services in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

42. In § 1955.147, the introductory text and paragraph (b) are revised, and the word "Form" in the first sentence of paragraph (e) is replaced with the word "Instruction" as follows:

§ 1955.147 Sealed bid sales.

This section provides guidance on the sale of all FmHA inventory property, except suitable FP real property which will not be sold by sealed bid. Before a sealed bid sale, the State Director will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP or surplus property, credit may be extended to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955–46 with any accompanying deposit in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. For program and suitable property, the minimum deposit will be the same as outlined in § 1955.130(e)(1) of this subpart. For NP or surplus property, the minimum deposit will be ten percent (10%). The bid will be considered delivered when actually received at the FmHA office. All bids will be date and time stamped. Advertisements and notices will request bidders to submit their bid in a sealed envelope marked as follows: "SEALED BID OFFER ________*________." (*Insert "PROPERTY IDENTIFICATION NUMBER ________").

* * * * *

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. For SFH and FP (surplus property) sales, preference will be given to a cash officer on NP or surplus property sales which is at least ____*____ percent of the highest offer requiring credit [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] Otherwise, equal bids will be accepted by public lot drawing. For program or suitable property sales, no preference will be given to program purchasers unless two identical high bids are received, in which case the bid from the program purchaser will receive preference. If a bid is received from any purchaser with a request for credit that (considering any deposit) exceeds the market value of the property or requests a term which exceeds the period for which the property will serve as adequate security, the bidder will be given the opportunity to reduce the credit request and/or term with *no* accompanying change in the offered price.

* * * * *

43. Section 1955.148 is revised to read as follows:

§ 1955.148 Auction sales.

This section provides guidance on the sale of all FmHA inventory property by auction, except suitable FP real property which will not be sold by auction. Before an auction, the State Director, with the advice of the National Office for organizational property, will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP and surplus property, credit may be offered to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. For program and suitable property sales, no preference will be given to program purchasers. The State Director will also consider whether an FmHA employee will conduct an auction or whether the services of a professional auctioneer are necessary due to the complexity of the sale. When the services of a professional auctioneer are advisable, the services will be procured by contract in accordance with FmHA Instruction 2024–A (available in any FmHA Office). Chattel property may be sold at public auction that is widely advertised and held on a regularly scheduled basis without solicitation. Form FmHA 1955–46 will be used for auction sales. At the auction, successful bidders will be required to make a bid deposit. For program and suitable property, the bid deposit will be the same as outlined in § 1955.130(e)(1) of this subpart. For NP or surplus property sales, a bid deposit of ten percent (10%) is required. Deposits will be in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. Cash and/or personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. Where credit sales are authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept a bid which requests credit in excess of the market value. When the highest bid is lower than the minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or in turn, the next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default, the approval official will remit the bid deposit as a Miscellaneous Collection according to FmHA Instruction 1951–B (available in any FmHA office). The bid deposit will be remitted *only* when the bidder defaults; otherwise it will be used at closing towards a downpayment or closing costs, as applicable. The closing will be conducted in accordance with the procedures prescribed in this subpart for the type property and program involved.

PART 1965—REAL PROPERTY

44. The authority citation for Part 1965 continues 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 C—Security Servicing for Single Family Rural Housing Loans

45. In § 1965.104, paragraph (b)(3) is revised to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(b) * * *

(3) *Maintenance.* When the borrower continues to occupy the security property but is not maintaining it, prior authorization from the State Director must be obtained before funds are advanced for essential repairs. In no case will this authority be used if a subsequent loan can be made. The protective advance should be amortized over a period consistent with the borrower's repayment ability, however, in no case may it exceed 96 months. The County Supervisor will submit to the State Director, through the District Director and Rural Housing Chief, the case file together with the following information and any additional information as prescribed in a State Supplement:

(i) An estimate of market value "as-is" and "as improved" based upon a current appraisal;

(ii) Description of the essential repairs and estimate of the cost;

(iii) Documentation, in the running case record, citing the reasons: Why it is in the Government's best interest to advance funds for repairs; whether the property is suited for retention in the program; why the loan should not be liquidated; and why a subsequent loan cannot be made; and

(iv) If there is a prior lien, written documentation that the prior lienholder refuses to make repairs.

* * * * *

46. In § 1965.106, the title of paragraph (a) is revised, and paragraphs (b) and (c) are revised to read as follows:

§ 1965.106 Subordination of FmHA lien.

(a) *Subordination of lien for purposes other than graduation/refinancing.* * * *

* * * * *

(b) *Subordination of lien for recapture to enable a borrower to graduate or refinance.* When a borrower can graduate to other credit pursuant to Subpart F of Part 1951 of this chapter or is refinancing the FmHA debt(s), and elects not to pay recapture at that time, the FmHA lien may be subordinated to secure the recapture receivable only. The amount of the subordination will not exceed the amount required to pay the FmHA debt (exclusive of recapture) plus reasonable closing costs and an amount not to exceed one percent for loan servicing costs if required by the lender. Further subordination of a lien securing a recapture receivable only is not authorized.

(c) *Approval authority.* An approval official, other than the State Director, 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. The State Director may approve a subordination regardless of amount.

* * * * *

47. In § 1965.125, the third sentence of paragraph (a)(1) is revised, paragraph (a)(3) is removed, paragraph (a)(4) is redesignated as paragraph (a)(3), and paragraph (a)(2) is revised to read as follows:

§ 1965.125 Liquidation.

(a) *Voluntary liquidation.*

(1) * * * The County Supervisor will advise the borrower if there appears to be any equity in the property. * * *

* * * * *

(2) *Consent to sale when the FmHA debt and authorized selling expenses exceed market value.* If a borrower proposes to sell the property for an amount which will be insufficient to pay the FmHA debt, prior lien(s), if any, and authorized selling expenses, an appraisal will be completed and the County Supervisor may consent to the sale if the proposed sale price is not less than the market value. If a current financial statement is not in the case file, a financial statement on Form FmHA 1944–3, "Budget and/or Financial Statement" will be taken to determine if the borrower has the ability to pay all or a substantial portion of the authorized selling expenses taking into account the borrower's moving/relocation expenses and the Government's prospects of acquisition of the property by voluntary conveyance or foreclosure.

(i) *Authorized selling expenses.* Authorized selling expenses are those which the seller customarily or legally must pay to convey title and include but are not limited to: a real estate broker's commission which does not exceed the most typical rate for the sale of similar property in the area, no more than three points to enable the buyer to obtain credit from another lender provided they are not being paid to reduce the purchaser's interest rate, real estate taxes, preparation of the deed, abstract and/or title fees, termite and/or other related inspections, title insurance, surveys, and deed or other revenue stamps. Junior liens may also be settled in the same manner as outlined in § 1955.10(c)(2) of Subpart A of Part 1955 of this chapter, however, the State Director must approve settlement of the junior lien regardless of the amount.

(ii) *Closing the transaction.* In no case will the borrower (seller) receive any cash proceeds from the sale. Distribution of funds will be handled as follows:

(A) Where there are sufficient cash proceeds at closing, the entire sale proceeds, minus prior liens, if any, and authorized selling expenses, must be applied to the FmHA debt.

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Expenses Other Than Personal," and submission of Form FmHA 2024-1, "Miscellaneous Payment System," according to FmHA Instruction 2024-P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses will only be vouchered when the County Supervisor has determined that it is in FmHA's financial interest to pay such selling expenses instead of the prospects of accepting a voluntary conveyance or foreclosure, taking into account the estimated additional costs which would arise were the property to be acquired and sold from inventory. Any real estate taxes due from the transferee for which there are insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing as a recoverable cost item. All other authorized selling expenses will be charged to the Rural Housing Insurance Fund (RHIF) as a related program expense prior to loan closing. A subsequent loan will be processed for any equity (market value "as-is" minus FmHA indebtedness) in the property and/or the amount of any needed repairs (amount of repairs *or* the difference between the market value "as-improved" and market value "as-is", whichever is lower). Amounts for the seller's equity and/or repairs will *not* be vouchered and charged to the borrower's account. Authorized selling expenses will not be considered or included in the amount assumed. See Exhibit C of this subpart (available in any FmHA office) for examples on how to determine amounts for vouchers, subsequent loans, and/or assumption agreements.

(iii) *Release from liability.* When consent under this paragraph is given, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with a 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(a)(3) and (b) of this subpart. In cases where the borrower is released from liability, and the loan is not being assumed, the note(s) will be stamped "Satisfied For Less Than Indebtedness—Borrower Released From Liability."

* * * * *

48. In § 1965.126, the first sentence of the introductory text, paragraphs (a) and (b)(1) introductory text, the second and last sentences of (b)(3), paragraphs (b)(4)(i), (b)(4)(ii), (b)(5), (b)(13), the introductory text of (c) and (c)(2), (d), and (e)(4)(ii) are revised to read as follows:

§ 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 program or nonprogram (NP) terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. * * *

(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 program or NP terms and release borrowers and cosigners 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) * * *

(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 program terms is authorized ONLY when both the assuming party meets eligibility requirements *AND* the property is suited for the housing program. The following loans may be assumed on program or NP terms under paragraph (c) or (d) of this section:

* * * * *

(3) * * * It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. * * * When the balance of the transferor's debt is paid or when only a portion of the security property was transferred which adequately secures the debt assumed by the transferee, and it is necessary to release the remaining portion of the security property, OGC will be requested to prepare the release document.

(4) * * *

(i) A single-family dwelling presently financed by FmHA may be transferred to a program applicant on program 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 retained in the program although they contain more square feet of living area and/or design features which would not be permitted when making an initial loan for an existing dwelling according to Subpart A of Part 1944 of this chapter. 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 not be suited for retention in the program. In those instances, assumption may be on NP 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 in size, design and/or cost.

(B) When a determination is made that the property should not have been financed originally.

(C) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by FmHA but which does not conform to current policies. This includes older and/or larger houses of a type that have been proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(D) A dwelling which is obsolete due to location, design, construction or age.

(5) *Amount of assumption.* Except for transfers covered in paragraphs (b)(12) and (c)(2) of this section, the transferee will assume the entire FmHA indebtedness unless the indebtedness plus prior liens exceeds the "as-is" market value of the property, in which case the transferee will assume an amount equal to the "as-is" market value of the property, less the amount of prior liens, if any. In the situations outlined in paragraphs (b)(12) and (c)(2) of this section, the amount of the debt will not be changed. When the buyer and seller have agreed upon transfer for "amount of debt," recapture of subsidy due based on "as-is" market value of the security property must be calculated and included as part of the total indebtedness.

* * * * *

(13) *Repairs.* When a loan is to be assumed on program terms, repairs necessary to bring the property to program standards will be accomplished with a subsequent loan in accordance with Subpart A of Part 1944 of this chapter, unless the transferee has sufficient funds to make the repairs with his/her own resources. In no case will FmHA suggest, encourage, or require that the transferor make necessary repairs as a condition for approving a transfer with assumption.

(c) *Assumption on program terms.* A loan may be assumed on program 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 are as follows:

* * * * *

(2) In the situations outlined in paragraphs (b)(12) and (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this section *only*, the assuming party will execute Form FmHA 460-9, "Assumption Agreement (Same Terms)," unless, due to more favorable terms available at the time, the assuming party desires to assume the loan on new terms. If the assuming party desires to assume the loan on new terms, they must meet all eligibility requirements of Subpart A of Part 1944 of this chapter. If a same terms assumption is consummated, the Finance Office will be involved only by submission of Form 450-10 to change the name and case number on the account being assumed. Same terms assumptions under this paragraph are authorized without considering the assuming party's eligibility for program assistance. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule) will not be changed by virtue of the assumption. After assumption, compliance with loan conditions is required. If a same terms transfer is consummated and the account is delinquent, it may be reamortized in accordance with § 1951.314(a)(7) of Subpart G of Part 1951 of this chapter. Eligibility for interest credit will be considered or re-evaluated at the time of assumption. Situations where these terms are authorized are:

* * * * *

(d) *Assumption on NP 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 suited for retention in the housing program, the debt may be assumed on NP terms if the assuming party has repayment ability, is creditworthy, 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 NP terms, the loan will be classified as a NP loan. The assumption agreement will bear interest at the SFH-NP rate in effect on the date the assumption is approved. The term of the assumption may not exceed the period for which the property will serve as adequate security for the debt. Other terms are as follows:

(1) When the purchaser does not own an adequate home and intends to occupy the house, the terms may be for a period not to exceed 30 years. A payment of two percent of the debt (including any subsidy due) or the current "as-is" market value of the property, whichever is lower, must be made at closing to reduce the amount assumed.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will not be for more than 10 years unless the State Director determines that more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. A payment of five percent of the debt (including any subsidy due) or the current "as-is" market value of the property, whichever is lower, must be made at closing to reduce the amount assumed.

(e) * * *

(4) * * *

(ii) Flood insurance is required on any house located in an identified flood or mudslide hazard area where flood insurance is available. If the house was built prior to implementation of the flood insurance program and flood insurance has never been available or is no longer available, assumption on program or NP terms may be approved without flood insurance provided the house is determined by the County Supervisor to be made (that is, any hazard that exists would not likely endanger the safety of dwelling occupants.) If not safe, or if water rises inside the living space of the house frequently, the property will be classified as NP and therefore subject to assumption on NP terms only. If the house is located in an identified flood or mudslide hazard area and flood insurance is not available when the assumption is approved, the County Supervisor will note in the appropriate space on Form FmHA 1940-1 that approval is subject to the requirement for having flood insurance if it becomes available in the future.

* * * * *

49. In § 1965.127, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and (b)(1) are revised to read as follows:

§ 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, the borrower and co-signer, if any, will be released from liability by the County Supervisor.

(2) A person who is jointly liable for a loan 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 withdrawing party's interest in the security party is conveyed to the person with whom the loan will be continued; and

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

(3) 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 cosigner, if any) may be released from liability when the determination is made that the

transferor (and cosigner, if any) has acted in good faith, adequately maintained the security property and otherwise fulfilled the loan covenants to the best of their ability. If a cosigner is involved, the transferor will not be released unless the co-signer is also released. The County Supervisor will determine if a release will be granted, will document such facts in the case file, and is authorized to release the transferor (and co-signer, if any) from liability.

* * * * *

(b) * * *

(1) When the transferor (and co-signer, if any) is released from liability, the account will be satisfied in the records of the Finance Office when one of the following is processed:

(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 copy of Form FmHA 1965-8 attached, indicating release from liability is transmitted to the Finance Office. The note will be marked "Satisfied and Borrower Released From Liability" and returned to the borrower.

(ii) Form FmHA 1965-22 indicating the transferor is released from liability.

* * * * *

50. Section 1965.128 is revised to read as follows:

§ 1965.128 Assignment of promissory notes and security instruments.

With the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis as outlined in this section. For loans subject to recapture of subsidy, recapture must be calculated based upon current market value and any recaputure due must be considered as part of the indebtedness at the time of assignment. The assignment will be made using a form approved by OGC on an individual case basis or on a State form approved by OGC and prescribed in a State Supplement. The State Director is authorized to execute the assignment, and this authority may not be redelegated. Assignment is authorized in the following instances:

(a) A borrower has requested it in writing when FmHA is being paid in full.

(b) An insurance company is paying FmHA in full following a property loss.

(c) A junior lienholder is foreclosing its lien and is paying FmHA in full.

(d) An account has been accelerated, all appeals have been exhausted, the case has been accepted by OGC for foreclosure, and FmHA is being paid in full.

51. In § 1965.129, the introductory text is revised to read as follows:

§ 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 or program or NP terms, as applicable.

* * * * *

52. Section 1965.137 is revised to read as follows:

§ 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 statute or other applicable law if the Administrator determines that application of the requirement or provision, or failure to take an action in the case of an omission, would adversely affect the Government's interest and/or have an inequitable effect on a borrower. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Request for exception must be made in writing and contain the borrower's case file and/or related files and pertinent information to support and/or 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.

Dated: June 23, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-16416 Filed 7-22-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-074]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arizona from a split status of Class Free-Class A to all Class Free. We have determined that Arizona now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Arizona.

DATES: Interim rule effective July 20, 1988. Consideration will be given only to comments postmarked or received on or before September 23, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Please state that your comments refer to Docket Number 88-074. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA , Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5965.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella.*

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

The standards for the different classifications of states or areas entail maintaining (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and