2; Wisconsin 1; Eastern Region (Consisting of New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, the District of Columbia, and Puerto Rico) 1; and Western Region (Consisting of Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) 1.

(b) *Temporary Membership.* The Secretary may appoint to the initial Board up to three temporary members in addition to the members appointed as otherwise provided in this subpart, as the Secretary determines appropriate. Each such temporary member shall be appointed for a single term not to exceed 3 years. Such appointments would ensure representation on the Board, to the extent practicable, to each State with a State soybean board that was contributing State soybean assessment funds to national soybean promotion and research efforts that reflects the relative contribution of such State to the national soybean promotion and research effort.

§ 1220.535 Length of appointment to initial board.

When the Secretary appoints the members of the initial Board, the Secretary shall also specify the term of office for each member. To the extent practicable, one-third of the members shall serve for 1-year, one-third shall serve for 2-years, and one-third shall serve for 3-years. Nominations to the initial Board may include preferences for individuals to serve the 1-year, 2-year, and 3-year terms.

§ 1220.540 Acceptance of appointment.

Producers nominated to the Board must signify in writing their intent to serve if appointed and to disclose any relationship with any soybean promotion entity or any organization that has a contractual relationship with the Board.

§ 1220.545 Verification.

The Secretary shall have the right to examine at any time the books, documents, papers, records, files, and facilities of nominating units as the Secretary deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the unit is eligible to nominate soybean producers for appointment to the initial Board.

§ 1220.550 Confidential treatment of information.

All documents submitted in accordance with this subpart shall be kept confidential by all employees of the Department. Nothing in this section shall be deemed to prohibit the disclosure of such information so furnished or acquired as the Secretary deems relevant and then only in the issuance of general statements based upon the reports of a number of persons subject to the order or statistical data collected therefrom when such a statement or data does not identify the information furnished by any one person.

§ 1220.555 Paperwork Reduction Act assigned number.

The control number assigned to the information collection requirements in Part 1220 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 is OMB No. 0581–0093 except that OMB No. 0581–0001 has been assigned to an information collection requirement in section 1220.525(a)(2).

§ 1220.560 [Reserved].

Done at Washington, DC., April 12, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91-9066 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-22-M

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: An interim rule was published on January 24, 1991, at 56 FR 2665 which amended the regulations at 7 CFR part 1421 with respect to the Farmer Owned Reserve (FOR) program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949, as amended (the 1949 Act). This rule was necessary in order to implement the changes made to section 110 by the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act). Generally, the amendments made by this rule specified the manner in which wheat and feed grain producers may enter the FOR program and the terms and conditions of the FOR program. This final rule adopts this interim rule without change.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013, telephone (202) 447-8223.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined that these program provisions will result in an annual effect on the economy of less than $100 million.

The title and number of the federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is Grain reserve—10.067.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the wheat and feed grain Farmer Owned Reserve program that the program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V and 48 FR 29115 (June 24, 1983).

Background

On January 24, 1991 (56 FR 2665), CCC published an interim rule which amended 7 CFR part 1421 with respect to the Farmer Owned Reserve (FOR) program.

No comments were received during the comment period which ended on February 25, 1991.

List of Subjects in 7 CFR Part 1421

Grains, Loans programs—agriculture, Price support programs, Warehouses.

PART 1421—[AMENDED]

Accordingly, the interim rule published at 56 FR 2665 on January 24, 1991, which amended 7 CFR part 1421 is hereby adopted as a final rule without change.

Signed this 11th day of April 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-9135 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1924, 1955, 1962, 1965

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Programs Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its insured loan servicing regulations to implement certain provisions of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (ACT) and to provide clarification for the servicing of insured farmer programs loans. On May 23, 1988, FmHA published a proposed rule in the **Federal Register** (53 FR 18392-18523) which explained the Agency's proposed regulations for implementing the Agricultural Credit Act. The FmHA published an interim rule on September 14, 1988, in the **Federal Register** (53 FR 35638-35798) to be effective on October 14, 1988. The interim rule addressed the comments to the proposed rule and requested comments on the interim rule to be submitted on or before November 14, 1988.

This final rule is based on comments received on the interim rule on 7 CFR parts 1924, 1955, 1962, and 1965. FmHA amends its regulations to conform to the ACT and to make other clarification and editorial changes. This action is being taken to:

(1) Facilitate keeping borrowers on the farm or ranch to the maximum extent possible; (2) respond to rural farm problems throughout the nation; (3) to minimize losses under farmer programs loans; (4) reduce the Government's cost of maintaining regulations for obsolete and unfunded farm loan programs; (5) reduce inconsistencies in interpretation of the regulations; and (6) provide more guidance to the FmHA field staff.

EFFECTIVE DATE: April 18, 1991.

ADDRESSES: The Final Regulatory Impact Analysis is available for public inspection in the Regulations, Analysis and Control Branch (RACB) of the Farmers Home Administration (FmHA), room 6348, South Agricultural Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Assistant to the Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, room 5025, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1471.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

My office has reviewed the regulation which the Farmers Home Administration (FmHA) is publishing as a final rule to implement, among other items provisions of the Agricultural Credit Act of 1987, Public Law 100-233, 101 Stat. 1662 et seq. We find that these regulations comply with that statute and the FmHA has the authority to adopt such regulations pursuant to that Act and section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Alan Charles Raul,

General Counsel.

Summary of Final Regulatory Impact Analysis (FRIA)

These regulations, with the exception of 7 CFR parts 1951 and 1955, are the remainder of a broad set of regulations that implement the Agricultural Credit Act of 1987 relating to the restructuring of delinquent loans that are expected to have more than a $100 million impact on the economy.

The USDA has developed a FRIA due to the effect the Act will have on the economy. There are a number of requirements in the Act, however, the most significant requirements are the loan restructuring with debt write-down provisions and the provisions for a secondary market. The secondary market provisions will be covered in a separate document. The Interim Regulatory Impact Analysis (IRIA) for this document was summarized in the interim rule published on September 14, 1988 (53 FR 35638-35798) and is incorporated by reference into this document. The estimates contained in that IRIA are considered to be substantially indicative of the number of borrowers qualifying for the write-down, and associated costs of debt restructuring under the interim regulations. Changes in the final regulations are not likely to affect servicing and property management procedures more than the extent of debt adjustment under the interim rule restructuring provisions.

Since these provisions are required by the ACT, other alternatives were not considered.

Programs Affected

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

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

Intergovernmental Consultation

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

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

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

Background

The Agricultural Credit Act of 1987 (Pub. L. 100-233) required a number of changes in FmHA regulations. Due to the great number of changes to the interim rule, and to expedite the promulgation of the final rule, we are publishing the revisions to the regulations in separate issuances. The final rule implementing 7 CFR parts 1809, 1902, 1910, 1941, 1943, 1944 and 1945 was published on May 25, 1990, in the **Federal Register** (55 FR 21517). The final rule version of 7 CFR part 1951, subpart S and part 1955, subparts B and C will be published at a later date.

Interim Rule

The interim rule was published in the **Federal Register** (53 FR 35638) on September 14, 1988, effective October 14, 1988, with a 60-day comment period. The comment period ended November 14, 1988. Comments were received from 77 individuals and organizations, follow-up correspondence and/or dialogue has occurred with some respondents and changes or revisions have been made as a result of a review of the comments. This final rule is based on comments received on 7 CFR parts 1924, 1955, 1962 and 1965.

Discussion of Comments and Regulation Revisions

The comments and regulation revisions will be addressed in the order that the regulations appear in the CFR. Minor changes to correct inconsistencies and to clarify previous changes will not be discussed but are adopted in this final rule.

Part 1924—Construction and Repair

Subpart B—Management Advice to Individual Borrowers and Applicants

Section 1924.51—General

One respondent commented that the definition of "Farmer Program Loan" should be expanded to include Indian Land Acquisition Act loans and Grazing Association loans. More specifically, the respondent argues that these loans should be eligible for the loan restructuring provided for under section 353 of the CONACT, as are all loans now classified as "farmer program loans." The Agency does not adopt this suggestion. Indian Acquisition Act loans are not administered in accordance with the provisions of the CONACT. The implementing statute for this program is 25 USC 488 et seq. The Disaster Assistance Act of 1989 (Pub. L. 101–82) authorized FmHA to debt settle these loans. FmHA published implementing regulations on November 15, 1989, in the **Federal Register** (54 FR 47509), thus no change to this regulation is necessary. While Grazing Association loans are made for agricultural purposes, these loans are not included within its definition of farmer program loans. See also discussion which appeared in the proposed rule published on May 23, 1988, in the **Federal Register** (53 FR 18392–18398). As for the loan restructuring program established by the Agricultural Credit Act of 1987, section 353 of the CONACT states that restructuring is available to a "farm borrower" who has a "farmer program loan" from the Agency. It is clear that this statute was intended to apply to farmer program loan borrowers as the Agency presently defines them. This is consistent with the premise that the Congress, when using the term "farmer program loans," was cognizant of the established regulatory definition and explicitly adopted the definition.

Section 1924.57—Planning

One respondent commented that this section requires the use of form FmHA 431–2, "Farm and Home Plan," which is not consistent with loan making and servicing regulations that allow for the use of other planning forms. The Agency does not feel this is an issue or that further clarification is needed, as § 1924.57(b) states that the references to form FmHA 431–2 mean this form or other plans acceptable to FmHA which include similar information.

One respondent commented that § 1924.57(b)(1) requires that there always be a current form FmHA 1962–1 in the file of a borrower with loans secured by chattels. The commenter suggested that form FmHA 1962–1 be completed no later than 90 days after the expiration date of the production cycle, as existing regulations require FmHA to release proceeds to pay essential family living and farm operating expenses, and the additional time would result in a more realistic form FmHA 1962–1 and Farm and Home plan. While the commenter's point is well taken for an individual borrower, FmHA administers a nationwide program. In accordance with its authorizing statute, FmHA must release proceeds for essential family living and farm operating expenses. Requiring that a current form FmHA 1962–1 be in the borrower's file at all times is the most efficient way to make sure the borrowers receive the required funds. The regulations both require and authorize the revision of form FmHA 1962–1 to reflect the borrower's current operation. Therefore, the Agency does not adopt the suggestion.

However, to prevent this problem from arising the Agency has clarified § 1924.57(b) to state that forms FmHA 431–2 and FmHA 1962–1 will cover the production/marketing cycle which most accurately reflects the annual production/marketing cycle of the borrower's operation.

One respondent commented that FmHA's definition of a feasible plan is weak. It is asserted that FmHA is making unsound loans because there is no requirement to budget for the replacement of capital items when doing a long range plan, and no requirement that the borrower have a 10% or more margin between the balance available for payment and the required debt repayments. While this comment is well taken, FmHA published a similar proposal as a proposed rule on January 15, 1987, in the **Federal Register** (52 FR 1706, 1723), and the proposed rule generated adverse public comment that requiring a reserve or budgeting for the replacement of capital items would improperly exclude otherwise eligible borrowers from receiving FmHA assistance.

One respondent commented that the Agency is ignoring good management practices in allowing farmers who suffered qualifying losses, but were not located in a disaster designated County to use County average yields if higher than the farmers actual yields. The Agency added this authority in the interim rule as a result of comments received on the proposed rule, expressing concern about those farmers suffering qualifying losses that were not located in a designated disaster area.

Several respondents stated that the use of the borrower's actual records for the past 5 years is very restrictive, as some borrowers do not have reliable records or have not been farming for 5 years, and in such cases, a 5 year average consisting of the borrower's actual yields, County average yields, and/or State average yields would be appropriate. The Agency agrees and has revised § 1924.57(d)(1) to allow the use of other data sources when the applicant's actual records are not available.

The Agency has added a new § 1924.57(d)(4) to clarify the circumstances when and how revisions will be made to the Farm and Home Plans.

Section 1924.58—Recordkeeping

One respondent commented that § 1924.58(b)(3) indicates that a borrower can be denied loan servicing programs if previously advised in writing that he/she has not been keeping adequate records. The respondent further stated that this restriction does not show up in the eligibility requirements of § 1951.909(c) of subpart S of part 1951 of this chapter. The Agency agrees and will address this comment in subpart S of part 1951 of this chapter which will be published at a later date.

Section 1924.59—Supervision

One respondent commented that it appeared that most borrowers will now require an annual farm visit and that most County Offices do not have adequate staffing to accomplish this requirement. The Agency does not believe this is an issue. State Directors have the authority to reassign personnel within their jurisdiction to those County Offices with larger farmer program workloads. State Directors also have contracting authority for loan making/servicing actions.

Section 1924.60—Analysis

One respondent commented that it appears that most borrowers will now require an annual analysis, and staffing levels in County Offices do not provide adequate personnel to accomplish this requirement. The Agency does not feel this is an issue. State Directors have the authority to reassign personnel to equalize the workload and also have contracting authority for loan making/servicing functions.

One respondent commented that § 1924.60(d) of subpart B of part 1924 and § 1951.902(a)(2) of subpart S of part 1951 require all FP loans to be reviewed annually, but do not spell out the type of review and are not consistent with the selective nature of the analysis outlined in § 1924.60. The Agency feels the degree of analysis is covered in § 1924.60(b) and that a complete financial and production analysis is needed for those situations described in § 1924.60 (d).

Exhibit A to Subpart B of Part 1924

One respondent commented that the last two sentences of paragraph 1 in exhibit A to subpart B of part 1924 should be deleted. The sentences state that FmHA must release ASCS and CCC payments which it holds as security regarding releases of farm income. The releases will continue up until the time FmHA accelerates that borrower's accounts. The Agency does not agree that the language in exhibit A to subpart B of part 1924 gives a blanket release of ASCS and CCC payments. The exhibit only states that FmHA will release ASCS and CCC payments so that the borrower can pay essential family living and farm operating expenses. The Agricultural Credit Act, Public Law 100-233, requires FmHA to notify borrowers that they are entitled to have FmHA release proceeds from the sale of crops, livestock and poultry products, and other property regularly sold in operating the farm so that they can pay essential family living and operating expenses.

The Agency has revised exhibit A to clarify that FmHA will release proceeds from the sale of crops and livestock products until such time as the borrower's account should become in default and FmHA accelerates the borrower's account.

Part 1955—Property Management

Subpart A—Liquidation for Loans Secured by Real Estate and Acquisition

Section 1955.1—Purpose

The words "individuals and organizations" have been added after the word "loans" in the first sentence for clarification.

Section 1955.3—Definition

Several respondents commented that the definition of farmer programs loan be expanded to include Indian Land Acquisition loans and Grazing Association loans. This comment was not adopted because the Agency does not consider these organizational type loans to be Farmer Programs loans. This issue is discussed in greater detail in the comments under subpart B of part 1924.

The Agency administratively adopts a definition for Leaseback/Buyback property and Farmer Program Loans. Leaseback/buyback property is defined as real property which has collateralized a Farmer Programs loan to which the Government acquired title. The term "Farmer Program loans" (FP) refers to the following types of loans: Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing loans for farm service buildings (RHF).

Section 1955.10—Voluntary conveyance of Real Property by the Borrower to the Government

One respondent commented that additional notification of possible environmental requirements, in the context of a conservation easement, should be given to borrowers who voluntarily convey real property to the Government and may wish to participate in preservation loan servicing programs. We agree, and have revised this section as well as various other notices FmHA is required to send to the borrower to provide additional guidance to the borrower of possible deed restrictions and conservation easements that may be placed on property once it is in FmHA Inventory.

For consistency and clarity with subpart C of this part, the Agency has added guidelines for the County Supervisor when contracting for an appraiser. The following has been added to § 1955.10 (e) of this subpart:

"For property securing FP loan(s), the contract appraiser must complete the appraisal in accordance with subpart A of part 1809 of this chapter (FmHA Instructions 422.1) for FP property, or subpart C of part 1922 of this chapter for Single Family Housing property. Also, the appraiser must meet at least one of the following qualifications:

(i) Certification by a National or State Appraisal Society.

(ii) If a certified appraiser is not available, the appraiser may be one who meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

Section 1955.13—Acquisition of Property by Exercise of Government Redemption Rights

One respondent commented that guidelines should be provided to determine value of redemption rights in those instances where the Government elects not to redeem the property, but state law allows the Government's rights to be sold. This comment was not adopted because of the numerous factors that may influence the value, and, often the value is determined on a case by case basis after negotiating with interested parties that wish to purchase the redemption rights. The Agency has, however, administratively revised the title of exhibit G to, "Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property into Inventory" and the use of this exhibit is limited to voluntary conveyance situations.

Exhibit G-1, "Worksheet for Determining Farmer Programs Maximum Bid on Real Estate Property" has been added for the use of determining FmHA's bid.

One respondent commented that exhibit G be replaced with exhibit I, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral" of subpart S of part 1951. The Agency did not adopt the comment because the amount of the Government's bid at a foreclosure sale is determined differently than the Net Recovery value for debt restructuring purposes. The two major differences are that in determining the Government's bid at the foreclosure sale, (1) the Agency takes into consideration potential rent or lease income while the property may be in inventory, and (2) the gain or loss in value of the property due to restrictions that are placed on the property such as conservation easements, conservation reserve program (CRP), etc. Exhibit G-1 has been added for determining FmHA's bid at a foreclosure sale using this criteria.

The exhibit G-1 also provides clarity in the use of the form when taking into consideration prior lienholder's debts and determining the maximum bid at a foreclosure sale.

Section 1955.15—Foreclosure by the Government of Loans Secured By Real Estate

This section was revised to clarify the handling of SFH loans, and to provide guidance for handling offers made by a borrower after acceleration.

No comments were received on this section; however, the Agency has administratively revised § 1955.15(d)(2)(iv) (A) and (B), added (C), (D) and revised (f) (5) and (6) to cross reference the servicing of SFH loans secured by and located on the same farm real estate as the Farmer Program loans(s) to § 1965.26(c) of subpart A of part 1965 of this chapter and provide additional guidance to the County Supervisors.

The Agency has administratively revised § 1955.18(i), "Leaseback/Buyback," to provide clarity and consistency in the definition of leaseback/buyback property.

There were other respondents who requested minor changes to subpart A of part 1955 as to grammar and clarification of phrases which the Agency has adopted, and has amended this subpart to reflect those changes, otherwise, the interim rule is adopted as final rule.

Part 1962—Personal Property

Subpart A—Servicing and Liquidation of Chattel Security

Section 1962.6—Liens and Assignments on Chattel Property

The Agency has administratively revised § 1962.6(c)(2)(i) by changing the word "not" to "no" in the third sentence for readability.

Section 1962.8—Liens on real estate for additional security

One respondent recommended that this section be clarified to state that a lien cannot be taken on the real estate of a delinquent borrower as a condition for receiving any Primary Loan Service program. The Agency does not agree with the recommendation because the Food, Agriculture, Conservation, and Trade Act of 1990 broadened its authority to include certain nonessential, unsecured assets in the calculation of Net Recovery Value. The Agency does not adopt the recommendation.

Section 1962.13—Lists of borrowers given to business firms

The introductory paragraph of this section is revised by removing the requirement that County Supervisors prepare a list of potential purchasers from the borrower's form FmHA 1962-1. This requirement is being removed because it does not apply to lists of potential purchasers of chattels or crops that are subject to an FmHA lien.

Section 1962.17—Disposal of chattel security, use of proceeds and release of liens

One respondent commented that the regulations should include a clear statement that normal income release is to be reinstated once restructuring is complete even for those borrowers that did not ask for income release after their accounts were accelerated. During the processing of the restructuring programs, the borrowers Farm Plan and form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," are coordinated and completed in accordance with the provisions in § 1924.57(b) of subpart B of part 1924 of this chapter and § 1962.17 of this subpart which includes the full level of release. Therefore, the Agency does not find it necessary to amend its regulations.

One respondent commented that the regulations should be amended to state that borrowers, whose accounts were accelerated on or after November 1, 1985, and on or before May 7, 1987, should receive the full level of releases and not be limited to the $18,000 commencing on the day that they are determined to be eligible for primary loan servicing. Such accelerated borrower accounts are processed for servicing programs in the same manner as non-accelerated borrower accounts, as set forth in § 1951.909 of subpart S of part 1951 of this chapter. During the processing of the approved request for restructuring, the acceleration is withdrawn, and normal servicing of the account is reinstated which includes the full level of releases. Therefore, the Agency does not find it necessary to amend its regulations.

One respondent commented that the regulation should be amended to provide that borrowers whose accounts were accelerated on or after November 1, 1985, and on or before May 7, 1987, should receive releases up to the $18,000 limit for the first 12 months after they apply for reinstatement and that it not be divided on a monthly basis. The Agency notified its field offices of its policy for reinstating releases for accelerated borrowers on January 28, 1988, February 2, 1988, and April 5, 1988, because the Agricultural Credit Act of 1987 required the Agency to notify these borrowers, within 45 days after the date of the enactment of the Act, of their right to apply for such releases. The 45-day timeframe did not provide sufficient time to publish regulations. The Act also established a 30-day time limit for accelerated borrowers to apply for such releases after receipt of the notice from the Agency. Since the time limit for applying for releases has expired, the Agency believes that substantially all problems related to release of normal income security for borrowers accelerated onm or after November 1, 1985, and on or before May 7, 1987, have been resolved through FmHA's appeals process.

One respondent commented that attachment 1 of exhibit A of subpart S of part 1951 of this chapter should not be sent to a borrower who is denied a release of proceeds from a sale of chattel security because it threatens liquidation and foreclosure which is inappropriate in this circumstance. The Agency does not agree that the use of attachment 1 of exhibit A in this circumstance is inappropriate because it merely provides a comprehensive explanation of the Agency's loan service programs, how to apply for them, the right for a meeting and an appeal, and what happens if a borrower does not win an appeal. The attachment does not threaten the borrower with liquidation or foreclosure. It simply summarizes the process which takes place if a borrower does not qualify for servicing, or the borrower does not liquidate the account voluntarily. The attachment has been reviewed by a readability expert, and approved by the District Court which decided *Coleman* vs. *Lyng* on November 23, 1988. Therefore, the Agency does not adopt the comment.

One respondent commented that the type of documentation required for the State Director's approval of a release of essential farm machinery should be set forth. The Agency has reviewed this policy and finds that the administrative burden imposed by the State Director's approval is not justified by any approval oversight advantages. The Agency has, therefore, removed the requirement for such approval from § 1962.17(b)(2)(ii) of this subpart.

One respondent commented that § 1962.17(b)(2)(iii) should be revised to require the County Supervisor to document how a borrower's operation can run more efficiently without providing the requested release of proceeds from the sale of chattel security. The Agency agrees and revises this section to require the County Supervisor to notify the borrower, in writing, why the request for the release was denied and why the County Supervisor does not agree that the planned use of the proceeds is basic, crucial or indispensable to the farming operation, and to give appeal rights.

One respondent commented that § 1962.17(b)(2)(viii)(B) should be clarified to point out that borrowers should not be required to sell crops for less than it would cost them to buy similar crops to feed to their livestock. The Agency does not believe it is necessary to set forth this particular example since the paragraph requires the County Supervisor to find that the feeding of crops to livestock is, in fact, preferable to selling the crops. The Agency adopts the interim rule without the recommended change.

Section 1962.29—Payment of fees and insurance premiums

This section has been clarified by stating that the County Supervisors are authorized to voucher to pay bills for insurance premiums on chattel security property.

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

Reference to form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," is removed from the introductory paragraph because the form has become obsolete. In its place is a reference to "attachment 1 of exhibit A of subpart S of part 1951 of this chapter."

Section 1962.40—Liquidation

This regulation has been clarified and reorganized to be more readable. Paragraph (a)(1) has been revised to clarify which attachments and forms must be given to a borrower who is voluntarily liquidating security. An additional clarification requires FmHA to wait 60 days before it discusses voluntary liquidation with the borrower except in serious situations which are documented in detail in the case file. The 60-day time period is desirable so that the borrower will have the option to apply for servicing instead of voluntarily liquidating. Since the Agricultural Credit Act of 1987 has clarified the type and timing of the servicing notice required, the Agency is revising this paragraph to insure that FmHA will have sufficient authority to discuss voluntary liquidation in serious situations as described above. The 60-day time period is provided to conform with the provisions of the 1990 Farm Bill which allowed borrowers 60 days to apply for servicing.

Paragraph (b) is clarified to state that the farmer program borrowers must be 180 days delinquent to be sent the servicing notices and to identify which forms to send these borrowers.

The 60-day time limit to voluntarily liquidate in paragraph (b)(3) has been removed because it was in conflict with the time limits set forth in the various notices to the borrowers.

Paragraph (b)(4) has been incorporated into paragraph (b)(2). The erroneous reference to accelerating the account after voluntary liquidation has been removed. The paragraph also has been clarified to state when and how the account should be accelerated and a civil action required.

Paragraph (e)(1) has been clarified to include a reference to attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter.

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

The introductory text has been clarified to include reference to attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter. A cross reference to § 1962.40 (a)(1) of this subpart also has been added.

One respondent commented that the County Committee needs specific guidelines to recommend whether or not a borrower should be released of personal liability for the balance of a debt following a voluntary liquidation. The Agency believes the guidelines set forth in § 1962.41(f) of this subpart are sufficient guidance to the County Committee. Therefore, FmHA does not adopt the respondent's suggestion.

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

Reference to attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter has been added for clarity in paragraph (a).

In paragraph (c), titles of referenced forms have been inserted, and an incorrect reference to "form FmHA 441–19" has been changed to "form FmHA 1955–41".

In paragraph (d), an incorrect reference to "attachments 1 and 2" has been changed to "attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter."

Section 1962.46—Deceased borrowers

Paragraph (f) has been revised to clarify how deceased borrower accounts are serviced under subpart S of part 1951 of this chapter. When the County Supervisor determines that the account of a deceased borrower is in monetary or nonmonetary default, and liquidation is necessary because no survivor or third-party has applied to assume the borrower's FmHA loan, the notices required by subpart S of part 1951 of this chapter will be sent to the executor of the estate and/or other appropriate person(s) or entity(ies) before liquidation as advised by OGC.

Section 1962.47—Bankruptcy and Insolvency

One respondent suggested that this section be amended to require FmHA to send a notice of Preservation Loan Service programs to all borrowers who are not eligible for the Primary Loan Service Programs because they were discharged in a chapter 7 bankruptcy. The agency also does not adopt the commenter's suggestion insofar as it requires sending notices to the attorneys of borrowers discharged in chapter 7 bankruptcies in the future. Pursuant to an FmHA Administrative Notice, FmHA has already provided an additional notice of the Preservation Loan Service programs to the attorneys of borrowers discharged in chapter 7 bankruptcy cases prior to the effective date of the Agrricultural Credit Act of 1987 (Act). Borrowers with bankruptcies pending on the effective date of the Act, and thereafter, will receive the appropriate notices through their attorneys when they file for bankruptcy. Paragraph (a)(3) of this section requires the County Supervisor to send attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter and exhibit D of this subpart to the borrower's attorney as soon as the County Supervisor learns that a bankruptcy has been filed. These notices discuss both the Primary and Preservation Loan Service programs, the eligibility standards, and advises the borrower how to apply. Exhibit D informs the attorney of borrowers, who have filed a chapter 7 bankruptcy, that FmHA will not continue with borrowers who do not reaffirm their debt with FmHA. Therefore, it is not necessary to send a second notice once the borrower has been discharged. Also, all borrowers, regardless of whether they file for bankruptcy or are discharged in a chapter 7 bankruptcy, are notified of the Preservation Loan Service programs if FmHA acquires title to the property.

Paragraph (a)(3)(i) has been revised for readability to clarify when FmHA should send the loan servicing notices to borrowers under the jurisdiction of the bankruptcy court. Some of the information now contained in this paragraph previously appeared in § 1962.47(a)(3) of this subpart, while other provisions appeared in § 1951 (c) and (d) of subpart S of part 1951 of this chapter. Consolidation of these provisions clarifies the regulation and improves readability. No notices will be required when OGC advisers that sending the notices is inconsistent with the provisions of a confirmed plan or the Bankruptcy Code. This provision is intended to reflect interpretations by bankruptcy courts which have allowed borrowers and FmHA to provide for the event of default when agreeing to a confirmed plan.

Paragraph (a)(3)(ii) has been revised to clarify how a borrower under the jurisdication of the bankruptcy court can apply for loan servicing. The time period during which a borrower can apply for servicing has been expanded from 45 days to 60 days to be consistent with the provisions of the 1990 Farm Bill. The Agency has removed the requirement that the borrower's attorney must request from the automatic stay in order to apply for servicing. See the discussion below concerning exhibit D for an explanation of why FmHA removed this requirement. This paragraph has been clarified to require that FmHA obtain relief from the automatic stay before it accelerates the borrower's account in cases where OGC advises that such relief is necessary. This change is necessary to confirm to the Bankruptcy Code since FmHA is amending the interim rule to omit the requirement that the borrower's attorney request relief from the automatic stay in order to apply for servicing.

A new paragraph (a)(3)(iii) has been inserted for purposes of improved readability and clarification of how FmHA will service borrowers who have filed chapter 11, 12 or 13 bankruptcy cases. Much of the information contained in this paragraph previously appeared in § 1962.47(a)(3)(i) and exhibit D of this subpart. Additional provisions were added to clarify the interrelationship of 1951–S regulations with the Bankruptcy Code. These revisions reflect the actual implementation of 1951–S servicing in cases presently within the jurisdication of bankruptcy courts.

To improve readability, the material previously appearing in paragraph (a)(3)(ii) and § 1951.907(d) dealing with servicing borrowers in chapter 7 bankruptcies has been consolidated into a new paragraph now designated as paragraph (a)(3)(iv).

Paragraph (c)(2) has been clarified to specifically state the notices under 1951–S are required when a bankruptcy is dismissed. This change reflects existing FmHA policy which was not clearly stated in the previous version of the rule.

Paragraph (c)(3) has been clarified to require the 1951–S notice and to provide for processing under 1951–S and acceleration where necessary, before liquidation in pending chapter 11, 12 and 13 cases. These changes reflect existing FmHA policy, and fill in the administrative requirements necessary to implement the policy. A revision to this paragraph requires FmHA to obtain any necessary relief from the automatic stay in order to comply with the Bankruptcy Code. This paragraph and paragraph (c)(4) have been revised to state that FmHA will not be required to send servicing notices to borrowers in bankruptcy when OGC advises that sending the notices will be inconsistent with a confirmed bankruptcy plan or the Bankruptcy Code. See the discussion under paragraph (a)(3)(i) above.

A new paragraph (c)(4) has been added to explain in detail how an account is to be liquidated once a bankruptcy case is closed. Some of this material was previously contained in paragraph (c)(3) but has been moved to improve readiability and clarity. This paragraph references a newly drafted exhibit D–1 which is designed to be sent to the borrower with a courtesy copy to the borrower's attorney. It explains the borrower's option and summarizes the requirements for primary and preservation loan servicing as they relate to borrowers who have been through a bankruptcy, but whose case is now closed. FmHA has added this paragraph in response to complaints that many borrowers are no longer represented by attorneys at this point, and the material contained in exhibit D is confusing and inapplicable to a borrower whose bankruptcy case is closed.

The material previously contained in paragraph (c)(4) has been redesignated as (c)(5). The paragraph has been clarified to reference the use of exhibit D–1 for the reasons explained above. Additional clarifications were made to correct a grammatical error and to state that the 1951–S notices will be sent unless the borrower's attorney was previously notified under 1951–S when the bankruptcy was filed. See also FmHA's response to the comment above that notice should be sent to borrowers who have been discharged in a chapter 7 bankruptcy. Clarifying changes have been made to paragraph (c)(5)(i) to avoid confusion as to when a liquidation can occur in a chapter 7 bankruptcy.

Exhibit D to Subpart A of Part 1962—Notice of Borrower's Attorney Regarding Loan Service Options

One respondent suggested that the requirement for the borrower's attorney to obtain relief from the automatic stay in bankruptcy before FmHA would process the borrower's servicing application be eliminated. In order to simplify the process of applying for servicing when the borrower has filed bankruptcy, FmHA has adopted this comment. The new procedure is explained to the attorney in exhibit D of this subpart. Exhibit D requires the borrower to return a preliminary application within 60 days of the attorney's receipt of the exhibit. The time period has been expanded from 45 to 60 days to conform to the provisions of the 1990 Farm Bill. The borrower's attorney must consent to such application. The exhibit states that FmHA will not be violating the automatic stay when it accepts the borrower's request for servicing in this matter.

Exhibit D–1 has been inserted to cover situations where the bankruptcy case is closed. See the above discussion concerning the clarifications to paragraphs (c)(3), (c)(4) and (c)(5) of the section.

Exhibit E to Subpart A of Part 1962—Releasing Security Sales Proceeds and Determining "Essential" Family Living and Farm Operating Expenses

One respondent recommended that the first paragraph be clarified to provide for a release of essential expenses at planning time and during the crop year. The Agency adopts this recommendation.

Also, the respondent stated that the sentence relating to hired labor in the fourth paragraph implies that hired labor is not an essential expense in beef cattle operations. The Agency disagrees with the respondent's interpretation of this sentence and adopts that portion of the interim rule without change.

Also, the respondent suggested that the words "and suppliers" be added following the word "creditors" in the fourth paragraph. The agency does not adopt this suggestion because a "supplier" is a "creditor" if the borrower owes the supplier for past services or materials.

Also, the respondent suggested that the fourth paragraph be clarified to provide guidance for releasing for rent if the borrower had already entered into a rental agreement and planted corn before FmHA determines that such action would lose money. The Agency believes that any adverse consequences resulting from such an unsuccessful management decision must be addressed on an individual case basis by the borrower, creditor, and the landlord. A unilateral decision to always pay the landlord, in many situations, would not be in the best interests of the borrower or creditors. The Agency, therefore, does not adopt this suggestion.

One respondent commented that a priority should be established to release security for secured and unsecured debts to other creditors. The respondent also suggested that consideration be given for releasing proceeds from the sale of security on a pro rata basis when such proceeds are insufficient to pay all creditors. The only purpose of exhibit E is to provide an explanation of the term, "essential family living and farm operation expenses," and not to address the method by which liquidation sale proceeds should be released and distributed. The distribution of all sale proceeds is set forth, in detail, in §§ 1962.17 and 1962.44; therefore, this comment is not adopted.

Exhibit F—Form FmHA 1962–1, "Agreement For the Use of Proceeds/ Release of Chattel Security"

One respondent recommended that the list of essential expenses as set forth in §1962.17(b)(2)(ii) of this subpart be inserted in the paragraph titled "When Can Collateral Be Sold To Pay Essential Family Living and Operating Expenses?" The Agency does not adopt this suggestion because the list can easily be obtained by requesting a copy of the regulation from any FmHA County Office.

Part 1965—Real Property

Subpart A—Servicing of Real Estate Security for Farmer Programs Loans and Certain Note-Only Cases

Section 1965.11—Preservation of security and protection of liens

One respondent recommended that protective advances should include the payment, by FmHA, of a borrower's prior lienholder account when it can be shown that no other credit is available from FmHA or other sources to refinance such debt. The Agency believes that this extension of credit in the form of a "protective advance" would circumvent the Agency's statutory maximum lending authorities and its annual appropriations for program lending levels. § 1965.11(c)(2)(i) authorizes the payment of prior liens only when it is in the Government's best interest to do so and when the account will subsequently be liquidated. The Agency, therefore, does not adopt this recommendation.

Paragraph (c)(1)(i) has been revised to provide for the use of exhibit B of this subpart and attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. These references were inadvertently omitted in the interim rule.

Paragraph (c)(1)(ii) has been clarified to explain that the payment of other liens by FmHA must be for the protection of the Government and not for the protection of the borrower's or third-party interest and that such payments are not considered to be protective advances as set forth in § 1965.11(b) of this subpart. Guaranteed loans, also, were added as one method of refinancing another creditor's loan if the creditor has begun foreclosure (initiated an action that could cause a borrower to lose possession of his/her property). Authority to approve advances for the payment of other lienholder's loans has been delegated to State Directors.

Paragraph (c)(2)(i)(B) has been revised to clarify that all appeals be completed before an account is accelerated and liquidated.

Two respondents commented that the reference to the use of attachments 5 and 6 of exhibit A of subpart S of part 1951 of this chapter in paragraph (c)(2)(ii) was incorrect and should have been attachments 1, 3, and 4 instead. The Agency agrees and has removed the reference. The Agency has also made a clarifying change which omits the requirement that additional servicing notices be sent when FmHA decides not to pay off a prior lien. FmHA has determined that it provides sufficient notice when it sends attachments 1, 3 and 4 to the borrower when the County Supervisor learns that a third party has taken action which may jeopardize FmHA's interest or FmHA is joined as a party in a court proceeding as required by § 1965.11(c)(1)(i) of this subpart.

Paragraph (c)(3) has been revised to reference the use of attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart, and to state that an account will not be liquidated until any appeal is resolved.

Section 1965.25(d)—Release of valueless liens

Two respondents commented. Of those, one respondent commented that the paragraph should be removed while the other respondent commented that single family housing (SFH) loans on nonfarm tracts should be treated differently than SFH loans on farm tracts. The Agency has attempted to clarify this paragraph by removing the reference to the liquidation of SFH loan security as a condition for the release of a valueless mortgage. The Agency is clarifying existing authorities to provide for a release of a valueless, Farmer Programs junior lien, taken as additional security on a borrower's dwelling that was financed with a Single Family Housing loan, without having to liquidate the Single Family Housing loan. The Agency, therefore, adopts the comment that a SFH Loan on a non-farm tract should not have to be liquidated as a result of releasing a valueless junior lien that secures a farmer program loan.

Section 1965.26—Liquidation action

The regulation has been clarified and reorganized to be more readable. Paragraph (a)(1) has been revised to clarify which attachments and forms must be given to a borrower who is voluntarily liquidating security. An additional clarification requires FmHA to wait 60 days before it discusses voluntary liquidation with the borrower except in serious situations which are documented in detail in the case file. This change is explained in the discussion above regarding clarification to § 1962.40. The 60-day time period is provided to conform with the provisions of the 1990 Farm Bill which allows borrowers 60 days to apply for servicing.

Paragraph (b) has been revised to clarify how the involuntary liquidation servicing of a borrower's account is carried out.

In paragraph (b)(2), the reference to paragraph (b)(1) of this section for when voluntary liquidation must occur is deleted because that time limit is inconsistent with the notice requirements contained in subpart S of part 1951 of this chapter. Paragraphs (b)(2) and (b)(3) have been redesignated as paragraphs (b)(3) and (b)(4).

One respondent commented that non-farmer program loans should be accelerated when attachments 5 and 6 of subpart S of part 1951 of this chapter are sent to the borrower and not when attachments 1 and 2 are sent. The Agency adopts this recommendation in paragraph (c)(1) with the additional clarification that non-farmer program loans will also be accelerated when attachments 1, 3, and 4, or 5, and 6, or 9 and 10 of exhibit A of subpart S of part 1951 of this chapter are sent to the borrower.

Paragraph (c)(1) has been further clarified to add the term chattel to cover loans in default secured by chattels. This change reflects existing FmHA policy which is to consider liquidating all FmHA loans when there is a default on a loan(s) which impacts the non-defaulting loan(s).

Paragraph (c)(2) has been revised to clarify that if a nonfarm property secures only an SFH loan(s) it will not be liquidated unless the appropriate provisions of subpart G of 1951 of this chapter have been met.

Paragraph (c)(2)(iv) has been revised to require County Committee approval before FmHA can compromise or adjust the farmer program debt when the borrower has a Single Family Housing Loan on a nonfarm tract which is additional security for the farmer program loan. The County Committee approval requirement has been added to conform with § 331(d) of the Consolidated Farm and Rural Development Act which states that FmHA can only approve compromise and adjustment offers on terms which have been recommended by the County Committee.

Paragraph (c)(3) has been added to clarify that SFH loans on farm tracts must be considered for interest credit and/or moratorium at the time servicing options are being considered for the FP loan(s) prior to acceleration.

Section 1965.27—Transfer of real estate security

Paragraph (b)(5)(iii)(B) has been removed because it has been determined that the requirement, that the value of the security be at least equal to the debt, prevented borrowers from receiving assistance authorized by subpart S of part 1951 of this chapter. Also, paragraphs (b)(5)(iii) (C) and (D) are redesignated as paragraphs (b)(5)(iii) (B) and (C).

One respondent commented that often, the unpaid balance on an EE loan exceeds the insured Farm Ownership (FO) loan limit of $200,000 and cannot be assumed as an FO loan under the provisions of paragraph (c)(1)(iii). The Agency agrees with the respondent and clarifies paragraphs (c)(1)(iii) (A) and (B) of this section to this effect. The Agency points out that such loans may also be assumed on ineligible rates and terms in accordance with the authorities in paragraph (c)(1)(iii)(C) of this section and on the same terms in accordance with paragraph (b)(5) of this section. Such assumptions are not subject to the $200,000 FO loan limitation.

Paragraph (e) has been revised to remove the reference to obsolete form FmHA 1924–14, and to insert a cross reference to subpart S of part 1951 of this chapter for servicing purposes.

Section 1965.34—Nonprogram (NP) loans

The introductory paragraph of this section has been revised to clarify that the servicing of Farmer Program Nonprogram loans is not authorized under subpart S of part 1951 of this chapter under any circumstances. Any servicing to debtors with only NP loans will be limited solely to those specified in paragraphs (a) through (g) which are not changed.

Exhibit B to Subpart A of Part 1965—Notification of Prior Lienholders Intent to Foreclose

The word "Prior" is changed to "Other" to clarify the exhibit's use.

One respondent commented that reference to attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter should be changed to attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter. The Agency agrees and adopts the change. Also, the Agency removes references in the exhibit to prior lienholders and the 10-day time period for the borrower to contact the County Supervisor because attachment 3 covers both prior and junior lienholders, and attachments 3 and 4 set forth the proper response time periods for the borrower to contact the County Supervisor.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1955

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

7 CFR Part 1962

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

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended by adopting parts 1924, 1955, 1962, and 1965 of the interim rule published September 14, 1988, (53 FR 35638–35798) as a final rule with the following amendments:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 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 B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.57 is amended by revising the introductory texts of paragraphs (b) and (b)(1), paragraphs (d)(1) and (d)(2), by adding paragraph (d)(4).

§ 1924.57 Planning

* * * * *

(b) *Annual plan (Form FmHA 431–2 "Farm and Home Plan," and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security").* These two forms will cover the production/marketing cycle which most accurately reflects the annual production/marketing cycle of the borrower's operation. The references to form FmHA 431–2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision. FmHA will not require the use of Coordinated Financial Statements.

(1) A new form FmHA 1962–1 must be completed once each year and revised as needed, in accordance with the Forms Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. There must always be a current form FmHA 1962–1 in the file of a borrower with loans secured by chattels. Form FmHA 1962–1 should be filled out and signed at the same time as a form FmHA 431–2 is signed, if a form FmHA 431–2 is required. The figures on the two forms must be consistent. For example, if the form FmHA 431–2 shows the borrower plans to spend $10,000 on equipment and no FmHA loan funds are being advanced for that purpose and the borrower has no income except from the farm operation, the form FmHA 1962–1 should show where the $10,000 will come from (Example—wheat, 3,000 bushels sold, August, $10,000, Purchase Equipment.) Form FmHA 431–2 will be required for those borrowers:

* * * * *

(d) * * *

(1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record

of production and financial management. For existing farmers, actual production and financial history for the 5 years immediately preceding the year of application is required. For beginning farmers and those with less than a 5 year operating history, the applicant's available production history taken from the applicant's reliable records will be used. To compute the 5-year average for such applicants, the County Supervisor will utilize available records in the order of priority as follows: Agricultural Stabilization and Conservation Service (ASCS) records, for that particular farm; County averages; State averages; Extension Service (ES) data; or other reliable sources of data to develop the projections. The County Supervisor will document the source used to complete the 5-year average. When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, and for those farmers who would have had a qualifying loss, as defined in § 1945.154(a)(29) of subpart D of part 1945 of this chapter, but were not located in a designated/declared disaster area, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s') yield(s) is less than the County average yield and the borrower's yields were affected by the disaster, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used.

(2) Unit prices for all agriculture commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year and published in a State Supplement which will be issued annually to coincide with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs or other significant factors that establish a regional difference for unit prices within the State. During development of unit prices, the State Director will consult with other agricultural agency representatives and agricultural lenders familiar with State and local conditions, before establishing the commodity prices. State Directors in adjoining States will consult each other and resolve any differences before releasing their established commodity price lists. Farmers who have proven accurate records to support a premium price for a commodity and/or contracts with well established markets will be allowed to use those higher prices. In addition, the supplement required in this section for commodity prices will also contain the 5-year history of disaster declarations/designations for all counties in the State, indicating the type of disaster(s) and incidence period(s). The information will be used to determine whether any particular year(s) should be considered as a disaster year for the applicant.

* * * * *

(4) Farm and Home Plans will not be revised by the County Supervisor unless information submitted by the borrower is not realistic and/or cannot be verified, or unless there are changes in the farming operation or use of loan funds. All revisions must be made in red ink by crossing out the original data and inserting revised data. Each revision must be dated and initialed by the borrower and County Supervisor.

(i) When there are major revisions which cannot be easily accommodated on the borrower's plan, a new Farm and Home Plan will be completed and attached to the original plan. When a major revision is made, the plan must be marked, "Revision I, II or III, etc.," to reflect the latest revision under consideration. The revisions must reflect the borrower's current operation based on the record of past performance.

(ii) When the automated Farm and Home Plan is used and revisions are needed, a new printout will be provided to the borrower. The County Supervisor will meet with the borrower to discuss, date and initial the revised Farm and Home Plan.

3. Section 1924.57(d)(3) is amended in the second sentence by changing the word "which" to "that."

4. Exhibit A to subpart B of part 1924 is amended by revising the first paragraph to read as follows:

Exhibit A—Letter to Borrower Regarding Releases of Farm Income To Pay Family Living and Farm Operating Expenses

* * * * *

Dear ______:

Public Law 100–233 requires the Farmers Home Administration (FmHA) to notify you that you are entitled to have FmHA release proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business including ASCS and CCC payments, so that you can pay essential family living and farm operating expenses. The releases will continue until such time as your account should become in default and FmHA has to accelerate your account.

* * * * *

PART 1955—PROPERTY MANAGEMENT

5. 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 and 2.70

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

§ 1955.1 [Amended]

6. Section 1955.1 is amended by inserting in the first sentence after the word "loans" the words "individuals and organizations."

7. Section 1955.3 is amended by adding, in alphabetical order, the definitions of "Farmer Program loans" and "Leaseback/Buyback property" to read as follows:

§ 1955.3 Definitions.

* * * * *

Farmer Programs loans. The term "Farmer Program loans" (FP) refers to the following types of loans: Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing Loans for farm service buildings (RHF).

* * * * *

Leaseback/Buyback property. This refers to real property which has collateralized a Farmer Program loan to which the Government acquired title.

* * * * *

8. Section 1955.10 is amended by revising the introductory text and paragraph (e) to read as follows:

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

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA should advise the borrower, in writing, that there is equity in the property before accepting an offer to voluntarily convey. If FmHA receives an offer of volunary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. FmHA should refuse the voluntary conveyance, if the FmHA lien has neither present nor prospective value or recovery of the value would be unlikely or uneconomical. Instead, for loans to individuals, FmHA should release its lien as valueless in accordance with § 1965.25(d) of subpart A of part 1965 of this chapter or § 1965.118(c) of subpart C of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent exhibit A with attachments 1 and 2 of subpart S of 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. Exhibit G of this subpart, "Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property into Inventory," will be used to determine whether or not to accept an FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA may recover its investment in return for the acceptance of the voluntary conveyance. In addition, prior to acceptance of a voluntary conveyance of farm real property that collateralizes an FP loan, the County Supervisor will remind the borrower-owner of possible deed restrictions and easement that may be placed on the property in the event the property contains wetlands, floodplains, historical sites and/or other federally protected environmental resources as set forth in exhibit M of subpart G of part 1940 of this chapter and § 1955.137 of subpart C of part 1955 of this chapter. When it is determined that all conditions of § 1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter will be sent prior to accepting a voluntary conveyance. Those borrowers who are indebted for nonprogram (NP) loans who wish to voluntarily convey property will not be sent exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter. For Farmer Program borrowers who have received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing option for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the nonfarm tract.

* * * * *

(e) *Appraisal of property.* After an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made to establish the current market value of the property. 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. For property securing FP loan(s), the contract appraiser must complete the appraisal in accordance with subpart A of part 1809 of this chapter (FmHA Instruction 422.1) for FP property, or subpart C of part 1922 for Single Family Housing property. Also, the appraiser must meet at least one of the following qualifications:

(1) Certification by a National or State Appraisal Society.

(2) If a certified appraiser is not available, the appraiser may be one who meets the criteria for certification in a National or State Appraisal Society.

(3) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

* * * * *

9. Section 1955.15 is amended by revising paragraphs (d)(2)(iv)(A) and (d)(2)(iv)(B), by adding paragraphs (d)(2)(iv)(C) and (d)(2)(iv)(D), and by revising paragraph (f)(5) and the introductory text of paragraph (f)(6) to read as follows:

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

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(A) When the borrower's dwelling is financed with an SFH loan(s) is secured by and located on the same farm real estate as the Farmer Program loan(s) (dwelling located on the farm), the SFH loan(s) will be serviced in accordance with § 1965.26(c)(1) of subpart A of part 1965 of this chapter.

(B) When the borrower's dwelling is financed with an SFH loan(s) and is located on a nonfarm tract which also serves as additional security for the Farmer Program loan(s), the loans(s) will be serviced in accordance with § 1965.26(c)(2) of subpart A of part 1965 of this chapter.

(C) When the borrower's dwelling is financed with an SFH loan(s) and is located on a nonfarm tract which does not serve as additional security for the Farmer Program loan(s), it will not be accelerated simultaneously with sending out either attachments 5 and 6 or attachments 9 and 10 of exhibit A of subpart S of part 1951 of this chapter, unless it is subject to liquidation based on provisions of § 1965.125 of subpart C of part 1965 of this chapter, taking into consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. If the SFH loan is in default and subject to liquidation based on provisions of § 1965.125 of subpart C of part 1951 of this chapter, the SFH loan(s) must be accelerated at the same time the borrower is sent either attachment 5 or 6 or attachments 9 and 10 to exhibit A of subpart S of part 1951 of this chapter. For those borrowers who are in nonmonetary default on their Farmer Programs loans and fail to return attachment 4 of exhibit A, the Farmer Programs loans and SFH loans will be accelerated at the same time. If the borrower appeals, one appeal hearing and one review will be held for both adverse actions.

(D) If the borrower's FP loan(s) were accelerated prior to May 7, 1987, and the SFH loan(s) is not accelerated, the SFH loan will be accelerated at the same time the borrower is sent either attachments 5 and 6 or attachments 7 and 8 to exhibit A of subpart S of part 1951 of this chapter unless the requirements of either § 1965.25(d) or § 1965.26(c)(2) of subpart A of part 1965 of this chapter are met or the liquidation of the SFH loan is based on provisions of § 1965.125 of subpart C of part 1965 of this chapter. If the borrower is sent attachments 5 and 6 and requests an appeal, one hearing and one review will be held for both the adverse action on the FP loan restructuring request and

SFH acceleration notices. If the borrower is sent attachments 7 and 8, there are no further appeals on the FP loans; but, the borrower is entitled to a hearing and a review on the SFH acceleration notice.

* * * * *

(f) * * *

(5) Amount of Government's bid. Except for Farmer Program loans and as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. For Farmer Program loans, except as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the amount determined by use of exhibit G–1, "Worksheet for Determining Farmer Program Maximum Bid on Real Estate Property," of this subpart, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid. 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.

(6) Bidding. The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings or State nonjudicial foreclosure law provides for someone other than an FmHA employee to enter the Government's bid. When the State Director determines attendance of an FmHA employee at the sale might pose physical danger, a written bid may be submitted to the Marshal, Sheriff, or other party in charge of holding the sale. The Government's bid will be entered when no other party makes a bid or when the last bid will result in the property being sold for less than the bid authorized in paragraph (f)(5) of this section.

* * * * *

10. Section 1955.18 is amended by revising paragraph (i) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(i) *Leaseback/buyback.* The County Supervisor will notify the immediate previous owner of leaseback/buyback rights by sending exhibit O of subpart S of part 1951 of this chapter, to the immediate previous owner, certified mail, return receipt requested, immediately after FmHA acquires real property that secured an FP loan. The County Supervisor will notify the immediate previous operator of leaseback/buyback rights in accordance with § 1951.911(a)(1)(iii) of subpart S of part 1951 of this chapter by sending exhibit P of subpart S of part 1951 of this chapter, to the immediate previous operator, certified mail, return receipt requested, after FmHA acquires real property that secured an FP loan. In the case of a conflict between homestead protection and leaseback/buyback as to the ownership or lease of the borrower's principal dwelling, the provisions of the homestead protection program will have priority over leaseback/buyback.

* * * * *

11. Exhibit G to subpart A is revised to read as follows:

Exhibit G—Subpart A—Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property Into Inventory

____

(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951–S for guidance in estimating the holding period, incomes and expenses in this exhibit.

1. Market Value of Property (Part 7, Form FmHA 422–1) $______
   Estimated Holding Period in Years ______
2. Income
   a. Annual Rent ______ × Holding Period ______ = ______
   b. Annual Royalties ______ × Holding Period ______ = ______
   c. Other Annual Income ______ × Holding Period ______ = ______
   d. Annual Land Appreciation ______ × Holding Period ______ = ______
   e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = ______
   f. Other (describe) ______ × Holding Period ______ = ______
   Total Additions = $______
3. Expenses
   a. Total Prior Lienholder Indebtedness (P and I) = ______
   b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, junior liens, etc.) List:
   ______ ______
   ______ ______ = ______
   c. Annual Taxes & Assessment ______ × Holding Period ______ = ______
   d. Annual Building Depreciation ______ × Holding Period ______ = ______
   e. Annual Management Costs ______ × Holding Period ______ = ______
   f. Total Essential Repairs to Secure & Resell = ______
   g. Annual Decrease In Land Value (if applicable) ______ × Holding Period ______ = ______
   h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = ______
   i. Total Interest Cost
   MKT Value $______ × Regular [1] OL Rate ______ × Holding Period ______ = ______
   j. Value loss due to restrictions that are placed on the farm such as Conservation Easements, and Conservation Reserve Program (CRP), etc. = $______
   k. Hazardous Waste Clean-up Costs = ______
   Total Deductions (Items a through k) = ______
4. Recovery Value End of Holding Period

1. ______ Market Value + 2. ______ Total Additions − 3. ______ Total Deductions = ______ Recovery Value

____
County Supervisor
____
Date
Concurrence by:
____
State Director
____
Date

12. Exhibit G–1 to Subpart A is added to read as follows:

Exhibit G–1—Worksheet for Determining Farmer Programs Maximum Bid on Real Estate Property

____

(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951–S for guidance in estimating the holding period, incomes and expenses in this exhibit.

1. Market Value of Property (Part 7, Form FmHA 422–1) $______
   Estimated Holding Period in Years ______
2. Income

[1] The regular operating loan rate more nearly reflects the Government's cost of money.

a. Annual Rent _____ × Holding Period _____ = _____
_____ _____ = _____
b. Annual Royalties _____ × Holding Period _____ = _____
c. Other Annual Income _____ × Holding Period _____ = _____
d. Annual Land Appreciation _____ × Holding Period _____ = _____
e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = $_____
f. Other (describe) _____ × Holding Period _____ = _____
Total Additions = $_____

3. Expenses

a. Total Prior Lienholder Indebtedness (P and I) = _____
b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, etc.) List:
_____ _____
_____ _____ = _____
c. Annual Taxes & Assessment _____ × Holding Period _____ = _____
d. Annual Building Depreciation _____ × Holding Period _____ = _____
e. Annual Management Costs _____ × Holding Period _____ = _____
f. Total Essential Repairs to Secure & Resell = _____
g. Annual % Decrease In Land Value (if applicable) _____ × Holding Period _____ = _____
h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____
i. Total Interest Cost
MKT Value $_____ × Regular [2] OL Rate _____ × Holding Period _____ = _____
j. Value loss due to restrictions that are placed on the farm such as Conservation Easements, and Conservation Reserve Program (CRP), etc. = $_____
k. Hazardous Waste Clean-up Costs = _____
Total Deductions (Items a through k) = _____

4. Bid will be the lesser of:

a. 1. _____ Market Value + 2. _____ Total Additions − 3. _____ Total Deductions = _____ Total

or,

b. _____ Unpaid FmHA Balance on Secured Debt + _____ Prior Liens = _____ Total

_____
County Supervisor
_____
Date
Concurrence by:
_____
State Director
_____
Date

PART 1962—PERSONAL PROPERTY

13. The authority citation for part 1962 continues to read as follows:

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

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.6 [Amended]

14. Section 1962.6(c)(2)(i) is amended in the first sentence by changing the word "not" to "that."

§ 1962.8 [Amended]

15. Section 1962.8 is amended by changing the first word in the second sentence from "Such" to "Additional."

16. Section 1962.13 is amended by revising the introductory text to read as follows:

§ 1962.13 Lists of borrowers given to business firms.

List of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as sale barns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards. FmHA will not distribute Form FmHA 1962.1.

* * * * *

17. Section 1962.17 is amended by revising paragraphs (b)(2)(ii), and (b)(2)(iii) to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

* * * * *

(b) * * *

(2) * * *

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses:

Household operating
Food, including lunches
Clothing and personal care
Health and medical expenses, including medical insurance
House repair and sanitation
School, church, recreation
Personal insurance
Transportation
Furniture
Hired labor
Machinery repair
Farm building and fence repair
Interest on loans and credit or purchase agreement
Rent on equipment, land, and buildings
Feed for animals
Seed
Fertilizer
Pesticides, herbicides, and spray materials
Farm supplies not included above
Livestock expenses, including medical supplies, artificial insemination, and veterinarian bills
Machinery hire
Fuel and oil
Personal property tax
Real estate taxes
Water charges
Property and crop insurance
Auto and truck expenses
Utilities payments
Payments on contracts or loans secured by farmland, necessary farm equipment, livestock, or other chattels
Essential farm machinery. An item of essential farm machinery which breaks beyond repair may be replaced when the County Supervisor determines that replacement is a better choice than alternatives such as the lease of a similar piece of machinery or the hiring of the service.

(iii) All of the items in paragraph (ii) may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation, and what would be an efficient method of production considering the borrower's

[2] The regular operating loan rate more nearly reflects the Government's cost of money.

resources. County Supervisors will refer to exhibit E of this subpart for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released. When the borrower and County Supervisor cannot agree that an expense is essential, the County Supervisor will notify the borrower, in writing, of why the requested release was denied, including why it is not basic, crucial or indispensable to the family and/or the farming operation and will give the borrower an opportunity to appeal in accordance with subpart B of part 1900 of this chapter and paragraphs (a)(2) and (b)(5) of this section.

* * * * *

18. Section 1962.29 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1962.29 Payment of fees and insurance premiums.

* * * * *

(b) *Insurance premiums.* County Supervisors are authorized to voucher for the payment of bills for insurance premiums on chattel security. Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal." Form FmHA 2024-1, "Miscellaneous Payment System," must be prepared and submitted according to the Forms Manual Insert (FMI) for payment to be charged to the borrower's account as recoverable cost. Bills may be paid when:

* * * * *

§ 1962.34 [Amended]

19. Section 1962.34 is amended in the fourth sentence of the introductory text by changing the words, "Form FmHA 1924-14, Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," to "Attachment 1 of exhibit A of subpart S of part 1951 of this chapter."

20. Section 1962.40 is amended by revising the introductory texts of paragraphs (a)(1) and (e)(1), and paragraph (b) to read as follows:

§ 1962.40 Liquidation.

(a) *Voluntary liquidation.*

(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, 3 and 4, and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, FmHA will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

* * * * *

(b) *Involuntary liquidation.*

(1) *General.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter. When liquidation is begun, it is FmHA policy to liquidate all security and EO property, except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for minimum family living needs will not exceed $600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness.

(2) *Farmer Program loan cases.* In Farmer Program loan cases, borrowers who are 180 days delinquent must receive exhibit A with attachments 1 and 2 or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a preliminary application within 60 days, the County Supervisor will send Attachments 9 and 10 of Exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachments 4, 6 or 10 of exhibit A of subpart S of part 1951 of this chapter within 60 days, the borrower's account will be accelerated in accordance with § 1955.15(d)(2) of subpart A of part 1955 of this chapter and paragraphs (b)(2) (i) and (ii) of this section. The County Supervisor will then attempt to repossess the security in accordance with § 1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with § 1962.49 of this subpart. Unmatured installments will be accelerated as follows:

(i) The District Director will accelerate all unmatured installments by using exhibits D or E of subpart A of part 1955 of this chapter except in cases referred to OGC for civil action, if the notice has previously been given.

(ii) Exhibits D or E of subpart A of part 1955 of this chapter will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only.

(3) *Lien search.* The County Supervisor will follow the directions set out in paragraph (a)(2) of this section.

* * * * *

(e) * * *

(1) After Attachments 1 and 2 or 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter have been sent and if security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

* * * * *

21. Section 1962.41 is amended by revising the introductory text to read as follows:

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

Borrowers who are liquidating voluntarily and who have not been sent exhibit A and attachments 1 and 2 or 1, 3 and 4 of subpart S of part 1951 of this chapter will be processed in accordance with paragraph (a)(1) of § 1962.40 of this subpart before any sale occurs.

* * * * *

22. Section 1962.42 is amended by revising the introductory texts of paragraphs (a) and (c), and paragraph (d) to read as follows:

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

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security a borrower and all cosigners on the note must receive exhibit A and attachments 1 and 2, or 1, 3 and 4 of subpart S of part 1951 of this chapter and the application forms. The appropriate procedures of subpart S of part 1951 of this chapter must be followed and any appeal must be concluded. The County Supervisor will take possession of security or EO property when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, and if the prior lienholder does not intend to enforce the lien. See § 1955.20 of Subpart A of Part 1955 of this chapter.

* * * * *

(c) *Sale.* Repossessed property may be sold by FmHA at public or private sale for cash under Form FmHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security," Form FmHA 1955-41, "Notice of Sale," the power of sale in security agreements under the UCC, or in crop and chattel mortgages and similar instruments if authorized by a State supplement. Also, repossessed property may be sold at private sale when the borrower executes Form FmHA 455–11, "Bill of Sale 'B' (Sale by Private Party)."

* * * * *

(d) *Risk of injury.* If a farmer program loan borrower has abandoned security *and* the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section. Then the County Supervisor will send the borrower and all cosigners on the note attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until all appeal rights have been given and any appeal has been concluded. When the appeal process is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of any appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, as determined by the County Supervisor. However, an independent third party (not an FmHA employee) must determine that livestock is in danger of substantial damage. Protective advances may be made in accordance with § 1962.40(e) of this subpart.

23. Section 1962.42 is amended by revising paragraph (f) to read as follows:

§ 1962.46 Deceased borrowers.

* * * * *

(f) *Liquidation of security.* When the County Supervisor determines that the account of a deceased borrower is in monetary or nonmonetary default, and liquidation is necessary because no survivor or third party has applied to assume the borrower's FmHA loan, chattel security and real estate security will be liquidated promptly in accordance with this subpart and subpart A of part 1965 of this chapter. Before liquidation, the notices required by subpart S of part 1951 of this chapter will be sent to the executor of the estate and/or other appropriate person(s) or entity(ies) as advised by OGC. If a suvivor(s) or heir(s) who will continue with the borrower's operation applies for servicing, FmHA will determine whether these individuals meet the requirements of paragraph (g) of this section. If a third party who will not continue with the borrower's operation applies for servicing, the requirements of § 1962.34 of this subpart, or § 1965.47 of subpart A of part 1965 of this chapter, as applicable, must be met. To qualify for servicing, the eligibility and feasibility requirements in § 1951.909 of subpart S of part 1951 of this chapter must also be met. However, the borrower's estate is not eligible for servicing. After the provisions of subpart S of part 1951 of this chapter have been complied with, and the opportunity to appeal has expired, the State Director will request OGC to effect collection if the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA and other assets are available in the estate or in the hands of heirs.

* * * * *

24. Section 1962.47 is amended by revising paragraphs (a)(3), (c)(2), (c)(3), (c)(4) and (c)(5) to read as follows:

§ 1962. 47 Bankruptcy and insolvency.

(a) * * *

(3) *Farmer Programs borrowers.*

(i) The County Supervisor will send the following servicing notices to the attorney of a Farmer Program borrower as soon as the County Supervisor learns that a bankruptcy has been filed: Attachments 1 and 2 of exhibit A (and not exhibit A) of subpart S of part 1951 of this chapter together with exhibit D of this subpart, and the application forms required by § 1951.907 of subpart S of part 1951 of this chapter. In addition, the attorneys of borrowers with confirmed Chapter 11, 12, or 13 plans who are 180 days delinquent on their plan will be sent these notices unless OGC advises that sending the notice is inconsistent with the provisions of the confirmed bankruptcy plan or other provisions of the Bankruptcy Code. The County Supervisor will send courtesy copies of these notices at the same time to the borrower and a dated copy of exhibit D only to OGC. The servicing notices explain that FmHA wants the borrower to know about the various Farmer Program loan servicing tools.

(ii) If, after consultation with OGC, it is determined that the borrower is under the jurisdiction of the bankruptcy court, and the borrower wants to be considered for loan servicing, the following conditions must be met. The borrower must complete and return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and the required preliminary application forms within 60 days from the attorney's receipt of the notices required by this section. The borrower's attorney, in writing, must also request servicing on behalf of the borrower within the 60-day time period. FmHA will connsider this request to be an acknowledgment that FmHA will not be interfering with any rights or protections under the Bankruptcy Code and its automatic stay provisions. FmHA's processing of the application may include consideration of primary and preservation loan servicing options and notification of FmHA's decision on the application in accordance with subpart S of part 1951 of this chapter, and holding any mediation, meetings or appeals requested by the borrower. However, the account will not be accelerated until FmHA has obtained any necessary relief from the automatic stay as determined by OGC.

(iii) In chapters 11, 12, and 13 cases, if the borrower files a bankruptcy plan covering the FmHA debt, FmHA will evaluate the merits of the plan and inform OGC of its recommendation for voting on or objecting to the plan. A plan will not be rejected by FmHA simply because it is not consistent with FmHA's loan servicing regulations. The Government's Attorney (who represents FmHA's interest in bankruptcy court) is free to object to the plan in accordance with the provisions of the Bankruptcy Code. If a borrower is operating under a confirmed bankruptcy plan, desires to apply for loan servicing and qualifies for servicing under FmHA's regulations, the borrower must also comply with provisions of the Bankruptcy Code practiced in that jurisdiction concerning modification of the plan. If a plan is confirmed before servicing and any appeal is completed under FmHA regulations, FmHA will complete the servicing or appeals process, and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and FmHA regulations as appropriate.

(iv) In chapter 7 cases, FmHA will not provide Primary Loan Servicing to a borrower discharged in bankruptcy before or after January 6, 1988, unless the borrower has reaffirmed the entire FmHA debt. If the chapter 7 debtor wants to reaffirm the debt, FmHA must accept the reaffirmation if permitted under bankruptcy law. If the FmHA debt is reaffirmed, the loan application will be processed in accordance with subpart S of part 1951 of this chapter. If the borrower reaffirms the FmHA debt in order to be considered for restructuring but is later denied restructuring, the borrower may revoke the reaffirmation. No reaffirmation is necessary for any discharged chapter 7 borrower to be eligible for Preservation Loan Service Programs in accordance with § 1951.911 of subpart S of part 1951 of this chapter.

* * * * *

(c) * * *

(2) If a bankruptcy is dismissed and liquidation of the account is necessary, liquidation will be accomplished in accordance with § 1962.40 of this subpart and § 1965.26 of subpart A of part 1965 of this chapter as appropriate. The borrower will be notified of FmHA's servicing options by the notices required by subpart S of part 1951 of this chapter. The borrower's attorney of record will be sent a courtesy copy of the notices when they are sent to the borrower.

(3) Except as provided in this paragraph, in chapter 11, 12, or 13 cases, if liquidation is necessary while the bankruptcy is pending, the borrower's attorney will be sent exhibit D and attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter and any additional attachments required by subpart S of part 1951 of this chapter. The County Supervisor will send courtesy copies of these notices at the same time to the borrower and a dated copy of exhibit D only to OGC. No notices will be sent under this paragraph to the borrower or the borrower's attorney if OGC advises that such act is inconsistent with the provisions of a confirmed bankruptcy plan or other provisions of the Bankruptcy Code. If the borrower applies for servicing within 60 days of the borrower's receipt of a notice under this paragraph, the application will be processed under this paragraph and in accordance with § 1962.47(a)(3)(ii) and (a)(3)(iii) of this section. However, the account will not be accelerated until FmHA has obtained any necessary relief from the automatic stay as determined by OGC. After consultation with OGC as to the timing and the appropriate notice of acceleration, the account will be accelerated in accordance with subpart A of part 1955 of this chapter.

(4) Except as provided in this paragraph, in chapter 11, 12 or 13 cases if liquidation is necessary after the case is closed, the borrower will be sent exhibit D-1 of this subpart and attachments 1 and 2 of subpart S of part 1951 of this chapter and any additional attachments required by subpart S of part 1951 of this chapter. The borrower's attorney of record will be sent a courtesy copy of exhibit D-1, and OGC will be sent a dated copy. No notices will be sent under this paragraph to the borrower or the borrower's attorney if OGC advises that such act is inconsistent with the provisions of a confirmed bankruptcy plan or other provisions of the Bankruptcy Code. If an application for servicing is received under this paragraph, it will be processed in accordance with subpart S of part 1951 of this chapter and in accordance with advice from OGC if required before FmHA can approve loan servicing. If an amendment to the confirmed plan is required, the provisions of § 1962.47(a)(3)(iii) of this subpart apply. If the borrower does not qualify for loan servicing and any appeal has been resolved in favor of FmHA, the account will be accelerated in accordance with subpart A of part 1955 of this chapter and the advice of OGC concerning the appropriate notice of acceleration.

(5) In chapter 7 farmer program loan cases, if liquidation is necessary either while the bankruptcy is pending or after the case is closed (see paragraph (c)(2) of this section if the case is dismissed), it will be handled as follows: After discharge, loans can be liquidated if the borrower has not reaffirmed the debt and the property is no longer part of the estate. Liquidation can proceed prior to discharge if the court approves an abandonment order and lifts the automatic stay. Exhibit D-1 of this subpart and attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter will be sent to the borrower if the borrower's attorney was not previously notified under subpart S of part 1951 of this chapter during the course of the bankruptcy proceeding. If the notices are sent, the borrower's attorney of record will be sent a courtesy copy of exhibit D-1, and a dated copy of exhibit D-1 will be sent to OGC. If these notices are not required, the borrower will be sent an acceleration notice (exhibit E of subpart A of part 1955 of this chapter), and there will be no appeal of the acceleration. Then the account will be liquidated.

* * * * *

25. Exhibit D to subpart A is revised to read as follows:

Exhibit D—Notice to Borrower's Attorney Regarding Loan Servicing Options

Procedure Reference: FmHA Instruction 1962-A.

Purpose: This Exhibit or a version approved by the Regional OGC will be used by a County Supervisor to send the attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter to the borrower's attorney when the borrower has filed for bankruptcy or is currently under the jurisdiction of bankruptcy court.

RETURN ADDRESS

Borrower's Attorney's Address

Dear : This letter provides important information which the Farmers Home Administration (FmHA) requests you to provide to your client ______ who has filed a bankruptcy petition. Subject to the applicable provisions of the Bankruptcy Code and FmHA regulations, FmHA may take action to enforce its security instrument given by ______ as security for an FmHA loan(s). However, your client may be able to cure one or all of the problems indicated below so that it will not be necessary for FmHA to enforce its security instrument.

[ ] Loan payments are $______ past due.

[ ] Your client has disposed of some of the property used to secure the FmHA loan(s). Your client did not get written approval for this action. This property is

____

____

____

____

[ ] Your client has breached the agreement(s) contained in the security instrument executed by your client in favor of FmHA by taking the following action(s)

____

____

____

____

____

[ ] Your client has failed to make the required payments under a confirmed bankruptcy plan.

[ ] Your client has

____

____

Before the Farmers Home Administration (FmHA) can act to enforce its security instruments, its regulations require FmHA to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FmHA has available. In order for FmHA to ascertain whether your client is eligible for these options, it is necessary for FmHA personnel to work closely with your client. If your client requests this contact in the manner described below, we hope that we can assist him or her. However, if favorable action is not possible, we will notify you, and provide your client with the opportunity to appeal the decision. We will not accelerate the account or initiate foreclosure until we comply with the applicable provisions of the bankruptcy code.

If your client wants to apply for primary and/or preservation loan servicing relief from FmHA, you must provide FmHA with a letter evidencing a request for servicing on behalf of your client within 60 days from your receipt of this letter. To apply for servicing, your client must also submit a signed copy of Attachment 2 and complete and return the preliminary application forms within this 60-day period. By this response, you will be acknowledging that when FmHA processes your client's application for loan servicing it is not interfering with any rights or protections your client may have under the Bankruptcy Code and its automatic stay provisions. FmHA's processing of the application may include considering the borrower for primary and preservation loan servicing options, notifying the borrower of FmHA's decision on the application in accordance with subpart S of part 1951–S of this chapter, and holding any mediation, meetings or appeals requested by your client. If your client fails to complete and return the required information within the 60-day period, FmHA will proceed to enforce its security instrument as allowed under the Bankruptcy Code and FmHA regulations.

If your client has recently filed under chapter 7, in order for FmHA to provide primary loan servicing to your client after discharge, your client must reaffirm the FmHA debt in accordance with the provisions of the Bankruptcy Code. No reaffirmation is necessary for your client to be eligible for preservation loan service programs.

If your client is operating under a confirmed bankruptcy plan, and desires to apply for loan servicing and qualifies for servicing under FmHA's regulations, you must also comply with provisions of the Bankruptcy Code practiced in your jurisdiction concerning modification of the plan. If your client's plan has not yet been confirmed by the Bankruptcy Court, you may choose to file a proposed plan which may or may not contain restructuring features similar to those available under FmHA regulations. The Government, of course, is free to object to the proposed plan in accordance with provisions of the Bankruptcy Code. If a plan is confirmed before servicing and any appeal is completed under FmHA regulations, FmHA will complete the servicing or appeals process, and may consent to a post-confirmation modification of the plan, if appropriate, in accordance with the advice from OGC.

FmHA's farmer program debt servicing regulation is found at 7 CFR, part 1951, subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,

County Supervisor

Attachments

26. Exhibit D–1 to subpart A of part 1962 is added to read as follows:

Exhibit D–1—Notice to Borrower Regarding Loan Service Options

Procedure Reference: FmHA Instruction 1962.47 (c)(3) and (c)(4)

Purpose: After consultation with the Regional OGC on the status of this case, this exhibit will be used by a County Supervisor to send the attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter to the borrowers who have been discharged under a chapter 7, and to borrowers who have had chapter 11, chapter 12 or chapter 13 bankruptcy plans confirmed but are no longer under the jurisdiction of a bankruptcy court. A courtesy copy of the notices will be sent to the borrower's attorney of record.

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RETURN ADDRESS

Borrower's Address

Dear : This letter provides information concerning the Farmers Home Administration's (FmHA) loan servicing programs. If your debt to FmHA has been discharged, this letter is not intended to violate the discharge order, but merely to inform you about the primary and preservation loan service programs now available as a result of the Agricultural Credit Act of 1987. After FmHA complies with its regulations, FmHA may take action to enforce its security instrument which you gave as security for an FmHA loan(s). However, you may be able to cure one or all of the problems indicated below so that it will not be necessary for FmHA to enforce its security instrument.

[ ] Loan payments are $_______ past due.

[ ] You have disposed of some of the property used to secure the FmHA loan(s). You did not get written approval for this action. This property is

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[ ] You have breached the agreement(s) contained in the security instrument which you executed in favor of FmHA by taking the following action(s)

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[ ] You have failed to make the required payments under a confirmed bankruptcy plan.

[ ] You have

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Before the Farmers Home Administration (FmHA) can act to enforce its security instruments, its regulations require FmHA to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FmHA have available. If you wish to apply for either primary or preservation loan servicing, you must complete and return attachment 2 of exhibit A of subpart A of this chapter and the preliminary application forms within 60 days of your receipt of this notice. All of these forms are attached to this notice.

Depending on your financial situation, your farming operation and the bankruptcy chapter you used as indicated below, you may or may not qualify for primary or preservation loan servicing. Primary loan servicing is described on pages 1–5 of Attachment 1. Preservation loan servicing is described on pages 5–7 of Attachment 1. To apply for these programs, you must comply with the 60-day time period set forth above. If you apply for loan servicing and qualify, you must also comply with any applicable provisions of the Bankruptcy Code practiced in your jurisdiction.

1. Chapter 7 Bankruptcy

If you have received a Chapter 7 discharge, the discharge has released you from personal liability for the FmHA debt. You are ineligible for FmHA's primary loan service program since you are no longer indebted to FmHA. If you wish to apply for primary loan servicing, you must reaffirm the entire FmHA debt (which may or may not be possible in your jurisdiction as the bankruptcy case may have to be reopened). If you reaffirm the FmHA debt, and do not qualify for primary loan servicing, it may be possible to revoke the reaffirmation subject to the provisions of the Bankruptcy Code and its time limitations. However, you may apply for preservation loan servicing without reaffirming the FmHA debt. If you qualify for preservation loan servicing, you would be able to retain possession of the home or farm.

2. Chapter 11 Bankruptcy

If you have had a Chapter 11 bankruptcy plan confirmed, you have been discharged from personal liability for your FmHA debt and the bankruptcy case has been closed. However, you are obligated to pay FmHA the amount indicated in your plan. You may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. If you are considering applying for loan servicing, you should consult with your attorney to determine if your confirmed chapter 11 plan will be affected if FmHA approves your loan servicing application. If any changes to the confirmed plan are necessary, please see the discussion below under chapter 12.

3. Chapter 12 Bankruptcy

If you have had a Chapter 12 bankruptcy plan confirmed, and the bankruptcy case has been closed, you may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. Despite any discharge of personal liability for your FmHA debt, you are obligated to pay FmHA the amount indicated in your plan. If you are considering applying for loan servicing, you should consult with your attorney to determine if your bankruptcy plan will be affected if FmHA approves your loan servicing application. Depending on the status of your bankruptcy plan and the bankruptcy law in your jurisdiction, you might be required to file an amended plan which may or may not contain restructuring features similar to those available under FmHA regulations. If amended plans are permitted in your jurisdiction and an amendment is appropriate to your situation, the Government, of course, is free to object to the amended plan in accordance with the provisions of the Bankruptcy Code. If any amended plan is approved before servicing and any appeal is completed under FmHA regulations, FmHA will complete the servicing or appeals process, and may consent to the amended plan if appropriate in accordance with advice from FmHA's legal counsel.

4. Chapter 13 Bankruptcy

If you have had a chapter 13 plan confirmed, and the bankruptcy case has been closed, you may be legally obligated to repay some or all of your FmHA debt despite any discharge resulting from the completion of your chapter 13 plan. You may still be able to cure one or all of the defaults listed above, and also qualify for primary or preservation loan servicing. If you are considering applying for loan servicing, you should consult with your attorney to determine if your chapter 13 confirmed plan will be affected if FmHA approves your loan servicing application. If your chapter 13 plan is affected, please see the discussion above under chapter 12.

If you fail to complete and return the required information within the 60-day period, FmHA will proceed to enforce its security instrument as allowed by the Bankruptcy Code and FmHA regulations by accelerating your account with the intention of foreclosing or liquidating FmHA's security. After acceleration, you may still be able to apply for preservation loan servicing if FmHA takes the property into inventory. If this event occurs, you will receive another notice with instructions on how to apply for preservation loan servicing. For information on this aspect of the program, please see item V on page 6 of attachment 1. To expedite any preservation loan servicing application, you understand that FmHA's ability to accept a voluntary conveyance is subject to its regulation which can be found at 7 CFR 1955.10.

FmHA's farmer program debt servicing regulation is found at 7 CFR part 1951, subpart S. We cannot promise you that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,

County Supervisor

Attachments

cc: Borrower's Attorney of record

27. Exhibit E to Subpart A of Part 1962 is revised to read as follows.

Exhibit E—Releasing Security Sales Proceeds and Determining "Essential" Family Living and Farm Operating Expenses

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA should release to pay for particular items within these broad categories. For example, FmHA has to release for transportation expenses, but should FmHA release so that a borrower can buy a new car? If at planning time or during the crop year it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form FmHA 1962-1 can be completed to show that FmHA plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA 1962-1 to release for a used car or for gas and repairs to the borrower's present car. Since it is necessary for FmHA to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for transportation. However, nothing requires FmHA to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA should release for operating expenses and whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

PART 1965—REAL PROPERTY

28. The authority citation for part 1965 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 and 7 CFR 2.70

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.11 [Amended]

29. Section 1965.11 (c)(1) is amended in the first sentence by changing the word "to" to "or."

30. Section 1965.11 is amended by revising paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(2)(i)(B), the introductory text of paragraph (c)(2)(ii), and paragraph (c)(3) to read as follows:

§ 1965.11 Preservation of security and Protection of liens.

* * * * *

(c) * * *

(1) * * *

(i) *County Supervisor's responsibility.* When the County Supervisor learns about a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower exhibit B of this subpart (available in any FmHA office) if another lienholder is foreclosing, and attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. Then the County Supervisor will send the following documents to the State Director: the County Office case file, complete with information concerning the action; recommendations for FmHA servicing action; a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property and any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. The payment of other liens by FmHA will be authorized by the State Director only to protect the Government's interest, not for the protection of the borrower's interest or the interest of any third party. When foreclosure by another creditor or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or guaranted loan, or approving a subordination to permit another lender to make a loan, provided:

(A) The requirements for the primary servicing program(s), a subsequent loan, guaranteed loan or subordination are met, and such assistance is necessary to enable the borrower to retain the property, and

(B) The borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) The third party agrees to postpone further action pending the processing of the primary servicing programs, a subsequent loan, guaranteed loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) * * *

(i) * * *

(B) After acquisition of the prior lien and completion of any appeals in favor of FmHA, the account will be accelerated and liquidated in accordance with § 1965.26(b) of this subpart. No exception will be made to this provision.

(ii) *Decision not to pay off the prior lien.* If FmHA decides not to pay off the prior lien, one of the following actions will be taken.

* * * * *

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower attachments 1 and 3 and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with subpart S of part 1951 of this chapter. If the junior lienholder forecloses and the property is sold subject to the FmHA mortgage, following the resolution of any appeal in favor of FmHA, the borrower's account will be accelerated and liquidated in accordance with the applicable portion of § 1955.15 of subpart A of part 1955 of this chapter.

* * * * *

31. Section 1965.25 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

* * * * *

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens when the mortgages or liens have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with an SFH loan and located on a *nonfarm tract* when the junior lien was taken as additional security for a Farmer Program loan(s). This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

* * * * *

32. Section 1965.26 is amended by revising the introductory texts of paragraphs (a)(1), (c)(2)(iv), paragraphs (b), (c)(1), (c)(2)(iv)(C) and adding paragraph (c)(3) to read as follows:

§ 1965.26 Liquidation action.

(a) *Voluntary liquidation.*

(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, and 3, and 4 and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, FmHA will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

* * * * *

(b) *Involuntary liquidation.*

(1) *General.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter.

(2) *Farmer Program loan cases.* In Farmer Program loan cases, borrowers who are 180 days delinquent must receive exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a preliminary application within 60 days, the County Supervisor will send attachments 9 and 10 of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachment 4, 6, or 10 of exhibit A of subpart S of part 1951 of this chapter within 60 days, the County Supervisor will submit the case to the District Director in accordance with the provisions of § 1955.15 of subpart A of part 1955 of this chapter.

(3) *Problem case report.* The County Supervisor will complete Form FmHA 1955–2, "Report on Real Estate Problem Case," and submit it in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(4) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of § 1955.15 of subpart A of part 1955 of this chapter.

(c) *Multiple loans and loans secured by both real estate and chattels.*

(1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans.

When liquidation of one or more FmHA loans secured by real estate or chattels is necessary, and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under subpart A of part 1962 of this chapter, except when real estate is transferred in accordance with § 1965.27 of this subpart. When a Farmer Program loan borrower also has another FmHA loan except a SFH loan or a nonfarmer program loan secured by property which also serves as security for the Farmer Program loan, the other loan will be accelerated at the same time the borrower is sent Notice of Intent notices contained in exhibit A of subpart S of part 1951 of this chapter (for example, Attachments 1, 3, and 4, or 5 and 6, or 9 and 10). One consolidated appeal hearing and one review will be held for both actions.

(2) * * *

(iv) Provided the County Committee agrees to the compromise or adjustment offer in accordance with § 1956.57(f) of subpart B of part 1956 of this chapter, the borrower will further agree to compromise or adjust the farmer program debt as follows:

* * * * *

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(iv)(A) of this section, the County Supervisor will have the borrower execute an Equity Recapture Agreement similar to exhibit D of this subpart, (available in any FmHA office), pledging to pay to FmHA an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office in accordance with the Automated Data Processing Systems (ADPS) Manual when an Equity Recapture Agreement is executed. The original signed Agreement will be attached to the original SFH promissory note and a copy to the borrower's FmHA County Office file. The borrower's file will be retained in the FmHA County Office until the equity is paid pursuant to the Agreement. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it, or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled as appropriate. An equity receivable account will be established by the Finance Office in the amount of the Equity Recapture Agreement, and the County Office will remit collection under the Agreement, in the same manner as an SFH subsidy recapture receivable. In addition, the following statement should be recorded in the body of Form FmHA 451-2, "Schedule of Remittance:" Equity Receivable Payment.

* * * * *

(3) SFH loans on farm tracts must be considered for interest credit and/or moratorium at the time servicing options are being considered for the FP loan(s) prior to acceleration. The county office file will be documented to show that interest credit and moratorium were considered. When the Notice of Intent notices, set forth in paragraph (c)(1) of this section are sent to a borrower who also has an SFH loan, and the dwelling is security for the farm loan(s) and is located on the farm tract, it will not be necessary to meet the additional requirements of subpart G of part 1951 of this chapter prior to accelerating the SFH loan accounts. The SFH accounts will be accelerated at the same time that the Notice of Intent notices set forth in paragraph (c)(1) of this section are sent to the borrower. If it is later determined the FP loan(s) is to receive additional servicing in lieu of liquidation, the SFH loan will be reinstated simultaneously with the FP servicing actions and may be reamortized in accordance with § 1951.314 of subpart G of part 1951 of this chapter.

* * * * *

33. Section 1965.27 is amended by removing paragraph (b)(5)(iii)(B), by redesignating paragraphs (b)(5)(iii)(C) and (b)(5)(iii)(D) as (b)(5)(iii)(B) and (b)(5)(iii)(C) respectively, and by revising paragraphs (c)(1)(iii)(A), (c)(1)(iii)(B) and (e) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(A) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an immediate family member of an individual borrower, an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative, an entity which is made up of only immediate family members of an individual borrower, or an entity which is made up of only immediate family members of any partner(s), joint operator(s) stockholder(s) or member(s).

(B) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an applicant who is determined eligible for an FO loan if the property has a suitable farm tract, or by an applicant eligible for an SFH loan if the property has a suitable dwelling on a farm or non-farm tract. When closing an assumption under this paragraph or paragraph (A) above, the loan will be reclassified as "FO" or "SFH," as applicable.

* * * * *

(e) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with paragraphs (c) or (d) of this section, the Government will not consent to the sale. However, the sale cannot be used as a reason for liquidation. In such cases involving SFH loans, the County Supervisor will advise the State Director of the sale. If the SFH loan account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the original FmHA borrower, in the usual manner. In such cases involving farmer program loans, they will be serviced in accordance with the provisions of subpart S of part 1951 of this chapter.

* * * * *

34. Section 1965.34 is amended by revising the introductory text to read as follows:

§ 1965.34 Nonprogram (NP) loans.

The servicing of Farmer Program Nonprogram (NP) loans are not authorized under Subpart S of Part 1951 of this chapter under any circumstance. Except as set out in the following paragraphs, debtors to FmHA for NP loans are not eligible to receive any program benefits. Such benefits include limited resource interest rates, reamortization, rescheduling, consolidation, deferral (including softwood timber loans), write-down of debt (including conservation set-aside easements), leaseback/buyback and/or homestead protection, and appeal rights. For an NP debtor with Farmer Programs loans only, the Farmer Program loans will be serviced in accordance with regulations applicable to those loans.

Any servicing to debtors with only NP loans will be limited solely to the following:

* * * * *

35. Exhibit B to subpart A is amended by revising the title to read as follows:

Exhibit B—Notification of Other Lienholders Intent to Foreclose

Dated: January 31, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-8880 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AB13

Hazardous Waste Operations and Emergency Response

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule; corrections.

SUMMARY: On March 6, 1989 at 54 FR 9294, the Occupational Safety and Health Administration (OSHA) published a final rule for hazardous waste operations and emergency response, 29 CFR 1910.120, in the **Federal Register**. On April 13, 1990 at 55 FR 14072, OSHA published a corrections document for that final rule which contained corrections to the preamble and regulatory text of the final rule. This document makes additional corrections to paragraph (a)(3), the definition of "uncontrolled hazardous waste site" and to paragraph (e)(9), certificate of equivalent training.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3647, U.S. Department of Labor, Washington, DC 20210. (202) 523-8151.

SUPPLEMENTARY INFORMATION: Pursuant to the Superfund Amendments and Reauthorization Act of 1986 (SARA), OSHA published its final rule on Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120, on March 6, 1989 at 54 FR 9294-9336. OSHA published corrections to the preamble and rule on April 13, 1990 at 55 FR 14072.

Two additional errors have come to OSHA's attention. This document corrects those errors.

SARA makes it clear that the OSHA regulation is to protect workers engaged in "hazardous substance removal" or exposed to "hazardous substances" in hazardous waste operations. (See 29 U.S.C. 655, note, (d)(1), for example). Pursuant to that legislative directive, 29 CFR 1910.120 consistently and repeatedly refers to protecting workers from "hazardous substances." The term "hazardous waste" as used technically in certain EPA regulations to define TSD facilities is narrower than the OSHA term "hazardous substance" and OSHA uses the narrow definition only to make its definition of TSD facilities similar to EPA's definition. However, in normal language, in most legislation and in the sense used by governmental bodies generally including EPA for non-TSD purposes, an area may be called an uncontrolled hazardous waste site because of the uncontrolled presence of any hazardous substance, not just "hazardous wastes."

OSHA's clear intention is and has been to protect workers at sites identified by governmental bodies as uncontrolled hazardous waste sites because of the presence of any hazardous substances. To prevent the possibility of any confusion, OSHA is correcting the term "hazardous waste" in the definition of "uncontrolled hazardous waste sites in 29 CFR 1910.120(a)(3) to "hazardous substances." In addition the clause "identified as an uncontrolled hazardous waste site by a governmental body, whether Federal, state, local or other" is added to the definition to make clear that this definition is to be read in conjunction with the scope paragraph.

SARA provides (29 U.S.C. 656, note, (d)(1) and (d)(3)) that the required training can result from a course and on the job training or from training and experience prior to the effective date of the interim standard. It also provides that, in either case, there be provision for certifying that covered employees have the required training. It is and has been OSHA's intention that a certificate of training be available to employees in both cases and 29 CFR 1910.120(e) and specifically paragraph (e)(6) so indicate. However to avoid possible confusion OSHA is correcting paragraph (e)(9) to further clarify this requirement.

List of Subjects in 29 CFR Part 1910

Hazardous waste, emergency response.

Accordingly 29 CFR 1910.120 is amended to read as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

§1910.120 [Amended]

1. The authority citation for 29 CFR part 1910, subpart H continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90 (55 FR 9032) as applicable.

Sections 1910.103, 1910.106, 1910.107, 1910.108, 1910.109, 1910.110 and 1910.111 are also issued under 29 CFR part 1911.

Section 1910.110 is also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1910.111 is also issued under 29 CFR part 1911.

Section 1910.120 is also issued under section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), 5 U.S.C. 553, and 29 CFR part 1911.

2. In § 1910.120 paragraph (a)(3) is corrected by revising the definition of "uncontrolled hazardous waste site" to read as follows:

* * * * *

§ 1910.120 Hazardous waste operations and emergency response.

"Uncontrolled hazardous waste site," means an area identified as an uncontrolled hazardous waste site by a governmental body, whether Federal, state, local or other where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands such as those created by former municipal, county or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous substance wastes. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. Normal operations at TSD sites are not covered by this definition.

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§ 1910.120 [Amended]

3. In § 1910.120 paragraph (e)(9) is corrected by revising it to read as follows:

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(e) * * *

(9) *Equivalent training.* Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in paragraphs (e)(1) through (e)(4) of this section shall not be