(b) Borrowers shall report to REA on the end-of-year operating report, REA Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572–0098.)

§ 1744.210 Effect of this subpart on REA loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with REA, its notes issued to REA, and the REA mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than REA, whose loan to the borrower is secured by the REA mortgage.

Dated: October 1, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–24761 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–15–F

Farmers Home Administration

7 CFR Parts 1900, 1910, 1951, 1955, 1962, and 1965

RIN 0575–AA39

NonProgram (NP) Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is implementing new regulations for NonProgram (NP) loans. This action is necessary since NP loans are not eligible for program supervision and servicing and NP debtors are not eligible for program benefits and entitlements. They cannot, therefore, be made, managed, collected, and liquidated in the same manner as program loans. In the past, there have been a relatively small number of NP loans, which are on more stringent terms than program loans and are an extension of credit for the convenience of the Government. The intended effect is to have a regulation for the uniform handling of NP loans.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 720–1452.

SUPPLEMENTARY INFORMATION: This final rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

BACKGROUND INFORMATION: On August 17, 1989 (54 FR 33906), Farmers Home Administration published a proposed rule on procedures for the making, management, servicing, and liquidation of nonprogram (NP) loan(s). FmHA now publishes this procedure for final rule. 7 CFR, part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans is a new regulation which establishes procedures for the making, management, servicing, and liquidation of nonprogram (NP) loans. Nonprogram (NP) loans are an extension of credit for the convenience of the Government to facilitate loan servicing actions or assist with the sale of acquired property. Program credit is not provided because the property either does not meet current program requirements and/or the applicant does not meet current loan program eligibility requirements. An NP loan is made on more stringent terms than a program loan. Previously, guidance on handling NP loans was dispersed through various regulations including Subparts A and C of part 1965 and subpart C of part 1955. The new regulation combines those portions of these regulations on NP loans into one regulation and provides for guidance that was not previously and/or explicitly provided in existing regulations. This will make it easier for FmHA personnel and the general public to ascertain FmHA's regulations on NP loans.

The issues in subpart J of part 1951 which were not explicitly included in the proposed rulemaking but are part of the subject matter addressed in the proposed rulemaking are as follows:

1. Provides that an appraisal fee will be collected from applicants who wish to obtain FmHA credit to purchase a Single Family residence at the time the applicant is determined eligible for FmHA financing. This requirement has recently been implemented for program applicants. It would not be equitable to impose a financial burden on program applicants and have the Agency pay the fee for nonprogram applicants; therefore, the collection of an application fee will be required from both program and nonprogram applicants.

2. Provides that NP loans include loans converted to NP status when only a portion of the security property is being transferred and the FmHA debt is not paid in full.

3. Establishes that NP loans can be reamortized when initially establishing a borrower on an escrow system when real estate taxes for one or more years and/or an insurance premium for one year is vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes or insurance, as applicable.

4. Provides that NP borrowers will escrow funds for the payments of taxes if requested by FmHA. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. A borrower who is also indebted for a Farmer Program (FP) program loan will not be required to escrow.

5. Provides that FmHA will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the government's best interest.

The major issues in subpart J of part 1951 which are clarified, established, or vary from that contained in existing FmHA regulations and were included in the proposed rulemaking are as follows:

1. Reiterates and clarifies that NP loans are not eligible for program supervision or management, and NP debtors are not entitled to program benefits and entitlements such as interest credit, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance or appeal rights.

2. Establishes a nonrefundable application fee, which will change periodically, to process an application for NP credit. The application fee is exclusive of any required credit report fee. Initially, the fee will be set at $100.

3. Establishes downpayment requirements which are based on the purchase price for a credit sale and the current market value or debt, whichever

is lower, for an assumption. While the downpayment requirements vary depending on the type of property, the determination as to the amount of the downpayment will be based on objective standards and are available at any FmHA office.

4. Establishes a collection policy consistent with conventional lenders on the servicing and collection of overdue payments. Program servicing regulations and authorities are not authorized.

5. Clarifies that acceleration letters to NP borrowers will not contain appeal rights, but will provide the borrower with the option to have the decision reviewed by the next level supervisor to confirm the loan is in default.

6. Provides detailed guidance on settlement of NP debts.

7. Provides that NP debtors will not be released from liability unless the NP debt is satisfied in full.

Related changes are made in other regulations to conform to the new regulation.

Programs Affected

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

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

Intergovernmental Consultation

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

Environmental Impact Statement

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

Discussion of Comments—August 17, 1989, Proposed Rule

The proposed rule published in the **Federal Register** (54 FR 33906) on August 17, 1989, provided for a 60-day comment period. Three comments were received during the comment period. One comment was received late, but was also considered in the scope of this review. All comments received were from FmHA field office employees. The summary of the comments received are presented here as follows:

1. One commentor stated that the reference to nonprogram borrowers not having appeal rights should be revised to state that a borrower does have appeal rights if the decision involved the denial of NP loan assistance under the leaseback/buyback and Homestead Protection provisions of Subpart S of Part 1951 of this chapter. We agree and have incorporated this change into the FmHA Instruction.

2. One commentor is concerned the statement "where a borrower has both program and NP loans outstanding, the servicing will be according to the regulation applicable to the program loan(s)" is unclear and therefore, can be misinterpreted. We agree and have revised this statement in the FmHA Instruction to state that a borrower who has a program and NP loan will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan. Nonprogram loans are not eligible for any program servicing except those permitted in subpart J of part 1951 of this chapter.

3. One commentor suggested the downpayment remain at 10% rather than having it reduced to 5%. We agree and have revised the instruction to state that the downpayment requirements on NP farm real estate, regardless of whether the property is sold from FmHA inventory or by a debtor through transfer and assumption, will be 10%.

4. One commentor is concerned that NP borrowers are required to pledge all their farmland as security for the NP loan. The commentor believes this requirement would severely limit the number of NP buyers for surplus farm inventory properties. We agree and have revised the FmHA Instructions to require an NP loan to be secured only by the property which is purchased. The commentor is also concerned that the regulation does not provide guidance on handling surplus CONACT property which is not farm real estate (e.g., grain elevators, lake lots, gas stations, warehouse buildings, etc). We agree and have revised the instruction to include these properties.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—housing and community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1951

Accounting, Accounting servicing, Credit, Debt restructuring, Loan programs—Agriculture, Low and moderate income housing loans—Servicing, Foreclosure, Government acquired property, Mortgages, Rural areas, Sale of government acquired property, Surplus government property, Loan programs—Housing and community development, Rent subsidies, Subsidies.

7 CFR Part 1955

Foreclosure, Government acquired property, 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

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

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 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—Adverse Decisions And Administrative Appeals

2. Section 1900.51 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 1900.51 General.

* * * * *

(b) * * * The provisions of this subpart do not apply to decisions involving nonprogram (NP) applicants, borrowers, or property except denial of NP loan assistance involving the leaseback/buyback and homestead protection provisions of subpart S of part 1951 of this chapter.

* * * * *

§ 1900.55 [Amended]

3. Section 1900.55 is amended by removing paragraph (a)(13) and redesignating paragraphs (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), as (a)(13), (a)(14), (a)(15), (a)(16), and (a)(17), respectively.

4. Exhibit C of subpart B of part 1900 is amended by revising the heading to read "Letter For Notifying Applicants, Lenders, Holders, And Borrowers Of Adverse Decisions When Part Or All Of The Decision Is Not Appealable [Not Used In Connection With Decisions Related To Nonprogram Applicants, Borrowers, Or Property]" and by removing in the second paragraph the words "(month) _____,".

PART 1910—GENERAL

5. The authority citation for part 1910 continues to read as follows:

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

Subpart A—Receiving And Processing Applications

6. Section 1910.1 is amended in the introductory text by adding a sentence at the end of the paragraph to read as follows:

§ 1910.1 General.

* * * Receiving and processing applications for Nonprogram (NP) loans will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

7. The authority citation for part 1951 continues to read as follows:

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

Subpart A—Account Servicing Policies

§ 1951.8 [Amended]

8. Section 1951.8 is amended by revising in paragraph (a) the words "1962.4 (j)" to read "§ 1962.4" and the words "1965.17 (d)" to read "§ 1965.17 (c)".

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

9. Section 1951.301 is amended by revising the seventh sentence to read as follows:

§ 1951.301 Purpose.

* * * These are NP loans which will be serviced according to subpart J of part 1951 of this chapter. * * *

10. Section 1951.314 is amended by revising paragraph (a)(6) and by adding paragraph (a)(10) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(6) To initially establish a borrower on an escrow system when real estate taxes for one or more years and/or an insurance premium for one year is vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes or insurance, as applicable.

* * * * *

(10) When only a portion of the security property is being transferred and the total FmHA debt is not being assumed. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner.

* * * * *

11. Subpart J of part 1951, consisting of § § 1951.451 through 1951.500, is added to read as follows:

Subpart J—Management and Collection of Nonprogram (NP) Loans

Sec.

1951.451 General.
1951.452 Policy.
1951.453 [Reserved]
1951.454 Review of adverse decisions.
1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).
1951.456 [Reserved]
1951.457 Payments.
1951.458 Servicing real estate taxes.
1951.459 Preservation of security.
1951.460 Release of security property or sale or lease of related property rights.
1951.461 Release of valueless FmHA lien without monetary consideration.
1951.462 Deceased borrower.
1951.463 Transfer of security and assumption of indebtedness.
1951.464—1951.467 [Reserved]
1951.468 Liquidation.
1951.469 Actions after liquidation of property.
1951.470—1951.478 [Reserved]
1951.479 Pilot projects.
1951.480 [Reserved]
1951.481 FmHA Instructions.
1951.482—1951.500 [Reserved]

Subpart J—Management and Collection of Nonprogram (NP) Loans

§ 1951.451 General.

This subpart sets forth policies and procedures of the Farmers Home Administration (FmHA) for making, managing, collecting, liquidating and settling loans on Nonprogram (NP) terms, except those on properties which secure (d) Community and Business Program (C&BP) or Multi-Family Housing (MFH) loans. All references in this subpart to farm real estate, farm property and farm chattels also include nonfarm property that was security for Farmer Program (FP) loan(s).

(a) An NP loan is a loan on terms more stringent than terms for a program loan and it is an extension of credit for the convenience of the Government because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Government. NP loans include:

(1) Sale of inventory property on NP terms;

(2) Assumption of a program loan on NP terms;

(3) Loans converted to NP status as a result of receipt of unauthorized assistance;

(4) Loans converted to NP status when only a portion of the security property is being transferred and the FmHA debt is not paid in full;

(5) Sale of the real property that was security for an FP loan to the previous owner under the Leaseback/Buyback program on NP terms;

(6) Sale of the real property of an FP borrower under the Homestead Protection program; or

(7) FP accounts rescheduled under an accelerated repayment agreement.

(b) C&BP/NP and MFH/NP transactions involving transfer of the security property will be submitted to the National Office for review, authorization and processing guidance. The submission must include a justification for the proposed action, a servicing and management plan, the State Director's recommendations, and the case files. The sale of C&BP and MFH inventory property to NP purchasers will be handled in accordance with subpart C of part 1955 of this chapter.

(c) Borrowers who have program and NP loans will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan(s). Therefore, NP loans are not eligible for any program servicing except those permitted in this subpart. However, even though the NP loan will not be eligible for program servicing benefits or entitlements, the borrower is not precluded from receiving assistance on the program loan (e.g., having an NP farm loan should not preclude a borrower from being considered for debt restructuring assistance in the form of a deferral, rescheduling, consolidation, etc., on a FP program loan). When the decision has been made to liquidate the program loan of a borrower who is also indebted for an NP loan and the NP security is also additional security for the program loan the NP loan will be accelerated at the same time as the program loan using the program acceleration notice. Likewise, if an NP loan is to be liquidated and the borrower is also indebted for a program loan which serves as additional security for the NP loan the program loan will be accelerated at the same time as the NP loan using the program acceleration notice. Any appeal of an adverse decision involving both an NP and program loan would affect only the program loan.

§ 1951.452 Policy.

NP credit is extended for the convenience of the Government in servicing an existing loan or to facilitate sale of inventory property. Where a borrower has both program and NP loans outstanding, servicing will be according to the regulation applicable to the particular loan(s). NP borrowers are not eligible for program entitlements or servicing actions such as subsidy, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance, buyout, writedown and conservation easements. Neither are NP borrowers subject to occupancy/operation requirements, graduation or other similar requirements imposed on program borrowers. NP borrowers are required to adequately maintain the security, pay real estate taxes and/or assessments when due or make scheduled escrow installments for taxes and insurance when required by FmHA, and keep buildings insured according to the promissory note and mortgage or security agreement, but may lease all or a portion of the security without FmHA's consent, except as provided in § 1951.460 (a0 and (b) of this subpart.

§ 1951.453 [Reserved]

§ 1951.454 Review of adverse decisions.

NP applicants and borrowers are not entitled to appeal rights under subpart B of part 1900 of this chapter; except that a borrower does have appeal rights if the decision involves the denial of NP loan assistance under the Leaseback/Buyback and Homestead Protection provisions of subpart S of this Part 1951. However, decisions involving NP applicants, borrowers or property are reviewable by the next level supervisor.

§ 1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).

(a) *Application for NP credit.* Applications for credit on NP terms are made at the County Office serving the area where the property is located or through an approved packager or real estate broker if so instructed by County Office personnel. To apply for NP credit, except Leaseback/Buyback and Homestead Protection, standard forms used to process program applications may be utilized or comparable documentation which contains information to establish financial stability, creditworthiness, and repayment ability for the requested credit. However, the loan approval official will have the discretion to determine what information is required to support approval of the loan. For property purchased under the Leaseback/Buyback and Homestead Protection programs the information required to support approval of the loan will be in accordance with subpart S of part 1951 of this chapter. The creditworthiness standards in § 1944.9 of subpart A of part 1944 of this chapter will be used to evaluate an NP applicant's eligibility for FmHA assistance to purchase a single family residence. The application is not complete until all information requested by FmHA is received.

(b) *Fees.* A nonrefundable application fee must be submitted with the application. In addition, credit reports will be ordered to determine the eligibility of NP applicants requesting FmHA credit. A nonrefundable credit report fee will be charged the applicant. The amounts of these fees change periodically; current fees will be quoted by FmHA county office personnel upon request. A borrower whose loan is reclassified as NP because unauthorized assistance was received; or only a portion of the security property is being transferred and the FmHA debt is not paid in full; or FP accounts rescheduled under an accelerated repayment agreement will not be required to submit an application or pay the application fee.

(c) *Eligibility restrictions.* If farm property is being purchased or the debt assumed, and an individual or member, stockholder, partner, or joint operator of a proposed entity transferee or purchaser has been convicted after December 23, 1985, under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office), for the definition of "controlled substance") prior to the approval of the credit sale or assumption in any crop year, the individual or entity shall be ineligible for FmHA credit for the crop year in which the individual was convicted four succeeding crop years following the conviction. Purchasers will attest on the application form used that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(d) [Reserved]

(e) *Downpayment.* A downpayment must be collected at closing and remitted in accordance with subpart B of this part 1951 (available in any FmHA office). The minimum downpayment will be based on the purchase price for a credit sale and the current market value (less any prior liens for chattel security) or the debt, whichever is lower, for an assumption. Downpayment requirements vary from time to time and vary by type of property. Current downpayment requirements will be provided by FmHA county office personnel upon request.

(f) *Interest rate.* The SFH/NP interest rate in effect at the time of loan approval will be charged on all NP assumptions and credit sales involving a single family residence. The FP/NP interest rate for real property or chattel property, as applicable, in effect at the time of loan approval, will be charged on NP assumptions and credit sales involving all other types of sales, except as otherwise stated. For the Leaseback/

Buyback program, the FP/NP farmer program interest rate for farm real estate in effect at the time of loan approval will be charged. The Homestead Protection program interest rate in effect at the time of loan approval will be charged on Homestead Protection properties.

(g) *Terms.* The purchase price for credit sales or the FmHA debt being assumed, less the downpayment amount, will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

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

(ii) For purchasers who do not meet the criteria in paragraph (g)(1)(i) of this section, the amortization period will not be for more than 10 years unless FmHA determines that more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(iii) When a presently indebted NP owner/occupant wishes to purchase another property which he/she intends to occupy, the term may be for a period not to exceed 30 years on the condition that the existing debt is reamortized for a period not to exceed 10 years less the number of years the loan has been outstanding. If the existing loan has been outstanding for more than 10 years, the loan must be paid off.

(2) *Farm property (real estate security) and CONACT residential property classified as surplus.* The note amount will be amortized over a period not to exceed 15 years. When an NP loan was initially scheduled for repayment in 15 years or less together with a 25-year amortization, FmHA may authorize an extension not to exceed a total of 25 years from the date the NP assumption or credit sale was closed provided it is in the Government's best interest and FmHA retains the same lien priority.

(3) *Farm property (chattels security).* The note amount will be amortized over a period not to exceed 5 years.

(4) *Farm property (Leaseback/ Buyback).* The note amount will be amortized over a period not to exceed 25 years.

(5) *Homestead protection.* The note amount will be amortized over a period not to exceed 35 years.

(h) *Modification of security instruments.* Any convenants in the promissory note and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on leasing, FP operation requirements, and consent to junior lien encumbrance will be deleted.

(i) *Security.* The security requirements for an NP loan on a single family residence will be in accordance with subpart A of part 1944 of this chapter. The security requirements for NP loans on farm real estate will be in accordance with Subpart A of part 1943 of this chapter and NP loans on chattel property will be secured in accordance with Subpart A of part 1962 of this chapter. Except that, an NP loan will be secured only by the property purchased.

(j) *Closing.* Title clearance, preparation of deeds, loan closing and property insurance requirements are the same as for an FmHA program loan on the same type property, except the purchaser must pay his/her own closing costs.

§ 1951.456 [Reserved]

§ 1951.457 Payments.

(a) *Receiving payments.* Borrowers indebted for a Single Family residence or who have purchased property under the Homestead Protection program will mail their payments directly to the address shown on the coupon. Borrowers who bring or send regular payments to the County Office will be instructed to mail them directly to the address shown on their coupon. Borrowers who bring in cash payments will be charged a fee necessary to convert the cash to a money order. If the fee is not paid, it will be deducted from the payment. Borrowers indebted for a farm loan(s), including property purchased under the Leaseback/ Buyback program will mail or bring their payments to the County Office.

(b) *Payments not received when due.* NP borrowers are expected to make scheduled payments when due. FmHA personnel are not required to provide program supervision, servicing, management or credit counseling in accordance with FmHA servicing instructions if payments are not received when due. To ensure consistency, a series of contacts will be made when servicing delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, FmHA may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by FmHA to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) offset will be used to the extent permitted by law.

§ 1951.458 Servicing real estate taxes.

In this section, "taxes" include assessments which, if not paid, will become a lien on the property. Borrowers are required to pay the taxes on FmHA security property when they become due. Security instruments for FmHA credit provide that the borrower will escrow funds for the payment of taxes if requested by FmHA. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. Monthly payment borrowers will be required to escrow, except that, a borrower who is also indebted for an FP program loan will *not* be required to escrow. Failure to pay the taxes is a default of the loan convenants. Borrowers who have not paid their taxes will be notified by FmHA. FmHA will *not* voucher for taxes on NP loans except to protect the Government's security interest. FmHA will advance funds for the payment of taxes as follows:

(a) *Borrowers required to escrow for taxes.* Taxes will be paid as they become due from the borrower's escrow account. If a borrower's escrow account contains sufficient funds, all discounts will be taken advantage of when it is determined by FmHA to be in the best financial interest of the borrower and the Government. If a borrower has insufficient funds in his/her escrow account to pay the taxes when due, the escrow servicer will request the borrower to pay an amount equal to the difference between the taxes due and the escrow balance in a lump sum within 30 days after notification. If the borrower fails to remit the amount requested, the amount will be advanced and charged to the borrower's account as a recoverable cost. When initially establishing a borrower on an escrow system, NP accounts can be reamortized provided taxes for 1 or more years are vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes.

(b) *Foreclosure-pending cases.*—(1) *Borrowers not required to escrow.* Where State law permits property will be sold at foreclosure sale subject to outstanding taxes. Where taxes must be paid up to the foreclosure sale date, payment should be deferred until the date for the foreclosure sale is set unless the taxing authority scheduled a tax sale sooner. This permits a single advance to be processed and allows flexibility for a

management decision if it is later determined, due to such considerations as high tax rate, length of time required to foreclose, and possible vandalism or other loss, there is no recovery to be made. If a tax sale is scheduled while foreclosure is pending, FmHA will either pay the taxes by voucher in accordance with paragraph (c) of this section or allow the property to be sold at the tax sale, as determined to be in the Government's best interest.

(2) *Borrowers required to escrow for taxes.* Taxes will continue to be paid as outlined in paragraph (a) of this section until the property is acquired by FmHA.

(c) *Processing tax advances.* When a borrower's taxes are to be paid by an escrow servicer, an advance will be drawn from FmHA to cover the escrow shortage. When a borrower's taxes are to be paid by FmHA, the advance will be charged to the borrower's account as an unamortized cost item. A tax advance will bear interest at the rate which is in effect on the initial loan or the lowest loan number within the fund code still outstanding.

§ 1951.459 Preservation of security.

(a) *Inspections of NP security property.* Inspections will be made on NP security as necessary to protect FmHA's security interest. In the event of abandonment, servicing actions will be taken according to § 1955.55 of subpart B of part 1955 of this chapter.

(b) *Subordination.* Subordination is not authorized where an NP borrower only owes FmHA an NP loan(s). Subordination of a mortgage may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien only when the security for the NP loan is also security for an FmHA program loan, the request for the subordination meets all the requirements for the subordination of the FmHA program loan and is in the best interest of the Government.

(c) *Bankruptcy.* NP loans on single family residences will be serviced in accordance with subpart C of part 1965 of this chapter, farm real estate in accordance with subpart A of part 1965 of this chapter, and farm chattel in accordance with subpart A of part 1962 of this chapter.

§ 1951.460 Release of security property or sale or lease of related property rights.

(a) *Partial release.* Release of a portion of the security property may be made when the borrower requests it and FmHA determines the release will not adversely affect the Government's interest. Release may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, of the property to be released. Proceeds from such transactions (less related expenses authorized by FmHA) will be applied to the FmHA indebtedness as an extra payment or to prior liens in order of lien priority.

(b) *Easements, right-of-ways, and lease of mineral rights or other rights.* Consent may be given by FmHA for the borrower to grant an easement or lease mineral rights when it is determined by FmHA the action will not adversely affect the Government's interest. The granting of an easement or right-of-way and lease of mineral rights may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, for rights granted or benefits are derived which are equal to or greater than the value of the property being disposed of. Proceeds from these transactions (less related expenses authorized by FmHA) will be applied to the FmHA debt as an extra payment or to prior liens in order of lien priority.

(c) [Reserved]

(d) [Reserved]

§ 1951.461 Release of valueless FmHA lien without monetary consideration.

Release of an FmHA lien without monetary consideration may be granted when it is determined by FmHA to have no present or prospective value or when enforcement would be ineffectual or uneconomical. Judgment liens or statutory redemption rights may be released only with prior consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart. The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA will take no action to liquidate the loan.

(b) *Assumption by spouse not liable for the FmHA debt.* The spouse of a deceased borrower who is not liable for the FmHA debt and who wishes to assume the debt may do so in accordance with § 1951.463(d)(1) of this subpart.

(c) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured (if funds for taxes and insurance are being escrowed, the escrow is a part of the scheduled payments). The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant by the entirety, or other person under the provisions of this paragraph applies only to the transfer of title resulting from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interests among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(d) *Assumption by a person, other than the spouse, who is not liable for the FmHA loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

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

(2) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or NP terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA debt is not

assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section or § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA determines it is not in the Government's best interest. If FmHA decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable for the loan under the terms of the security instrument.

(a) [Reserved]

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

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or children, assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholder/member/partner/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholders/members/partners/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an inter vivos trust.* When the borrower conveys security property into an inter vivos trust, whereby the borrower does not transfer rights of occupancy in the property, FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met.

(c) *Program assumption.* A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (SFH, Farm Ownership (FO), etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as Rural Housing (RH), FO, etc., as applicable.

(d) *NP assumption.* The rates and terms for an NP assumption will be as provided in § 1951.455 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (d)(1), (d)(2), and (d)(3) of this section. An individual not liable for the loan who acquires title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, and account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms, after assumption compliance with loan conditions is required. If a same terms assumption is consummated and the account is delinquent, it may be reamortized in accordance with applicable program regulations. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's surviving spouse.

(ii) A divorced borrower's spouse.

(iii) A joint tenant with right of survivorship or relative of a deceased borrower.

(2) The spouse or child of a living borrower to whom title to the security property has been conveyed by spouse or parent.

(3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1951.462 (c) or (d) of this subpart may do so.

(e) *County Committee actions on Farmer Program assumptions.* On program assumptions, the County Committee must certify the transferee's eligibility for the type of loan to be assumed.

(f) *Title clearance and loan closing.* Title clearance and closing will be the same as for any program loan of the same type.

(g) *Release from liability.* Release from liability of NP borrowers is not authorized.

§§ 1951.464—1951.467 [Reserved]

§ 1951.468 Liquidation.

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary.* If an NP borrower in default indicates a willingness to voluntarily liquidate, other liquidation actions by FmHA may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price.

(b) *Foreclosure.* If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing or able to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next level supervisor to consider evidence that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA will proceed with foreclosure without further notice or extension of time.

(c) *Conveyance to FmHA.* FmHA does not solicit or encourage conveyance of NP security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's best interest. Release of the borrower from liability is not authorized. Upon receipt of an offer to convey, FmHA will remind the borrower of provisions for voluntary liquidation under paragraph (a) of this section. The borrower will also be informed of the consequences of a conveyance by deed in lieu of foreclosure as follows:

(1) All costs related to the conveyance which FmHA pays will be added to the debt;

(2) A credit equal to the market value of the property, as determined by

FmHA, less prior liens, will be applied to the debt; and

(3) If the credit does not satisfy the debt, the debtor remains liable for the payment of the account balance and the account will be debt settled.

(d) *Consent to sale of real estate security when the FmHA debt and authorized selling expenses exceed market value.* If an NP borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA debt, prior lien(s) if any, and sale expenses authorized by FmHA, an appraisal will be completed and FmHA may consent to the sale if the proposed sale price is not less than the market value. No commission will be allowed or paid under this paragraph when the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale involves FmHA credit. If credit is not being extended to the persons mentioned in the preceding sentence (a cash sale), a commission will be allowed or paid. In no case will the borrower (seller) receive any cash proceeds from the sale. Any real estate taxes due from the transferor and other authorized selling expenses for which there is insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. Authorized selling expenses will not be considered or included in the amount assumed. Release from liability is not authorized.

§ 1951.469 Actions after liquidation of property.

(a) [Reserved]

(b) *Servicing unsatisfied account balances.* A current financial statement will be obtained, if possible, when application of sale proceeds does not satisfy an NP loan; or if a conveyance to FmHA has been accepted and credit of the market value less prior liens and estimated inventory handling expenses does not satisfy the debt, FmHA will pursue collection if there appears to be income or assets from which to collect. Where the borrower owns other real estate, or if the borrower is known to be in the process of purchasing other real estate (such as another dwelling), a judgment for the remaining debt including expenses paid by FmHA will be sought.

(c) [Reserved]

§§ 1951.470–1951.478 [Reserved]

§ 1951.479 Pilot projects.

From time to time FmHA conducts pilot projects to test concepts related to the management and/or sale of SFH inventory property which may deviate from the provisions of this subpart, but will not be inconsistent with provisions of the authorizing statutes, or other Acts affecting FmHA's loan programs. Prior to initiation of a pilot project, FmHA will publish in the Federal Register a Notice outlining the nature, scope, and duration of the pilot. The pilot projects may be handled by FmHA employees and/or under contract with persons, firms, or other entities in the private sector.

§ 1951.480 [Reserved]

§ 1951.481 FmHA Instructions.

Detailed FmHA Instructions for administering this subpart are available in any FmHA office (FmHA Instruction 1951–J).

§§ 1951.482–1951.500 [Reserved]

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

12. Section 1951.608 is amended by revising in the second sentence of paragraph (e)(1)(i)(B) the words "under paragraph (e)(i)(B) of this section" to read "under this paragraph".

13. Section 1951.608 (e)(1)(iii) is amended in the second sentence by revising the words "of FmHA 1951–13" to read "or FmHA 1951–13".

14. Section 1951.612 is amended by revising in the fourth sentence of paragraph (a)(1)(i) the words "§ 1951.618 (a)(1)(iii)" to read "1951.618 (a)(1)(ii)"; by revising in the second sentence of paragraph (a)(1)(ii) the words "§ 1951.618 (a)(1)(iii)" to read "§ 1951.618 (a)(1)(ii)"; by removing paragraph (a)(1)(iv), introductory text; by redesignating paragraphs (a)(1)(iv)(A), (a)(1)(iv)(B), (a)(1)(iv)(C), and (a)(1)(iv)(D) as paragraphs (a)(1)(iii)(A), (a)(1)(iii)(B), (a)(1)(iii)(C), and (a)(1)(iii)(D), respectively; and by revising the introductory text of paragraph (a)(1)(iii) and newly redesignated paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(D) to read as follows:

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

* * * * *

(a) * * *

(1) * * *

(iii) When the case is not serviced according to paragraphs (a)(1)(i) or (ii) of this section, or the recipient was not eligible for a loan, or the loan was approved for unauthorized purposes as outlined in § 1951.604 (a)(1)(iv) of this subpart, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, *except* that, if interest credit is granted in a case where continuation is authorized under the provisions of this paragraph, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credit is granted in cases of this type, the following actions must be taken:

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

* * * * *

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

* * * * *

§ 1951.618 [Amended]

15. Section 1951.618 is amended by removing paragraph (a)(1)(ii); by redesignating paragraph (a)(1)(iii) as (a)(1)(ii); by removing paragraph (a)(8)(i)(B); by redesignating paragraph (a)(8)(i)(C) as (a)(8)(i)(B); and by revising in the second sentence of the introductory text of paragraph (b) the words "in paragraph (b) of this section" to read "under this paragraph."

Subpart S—Farmer Programs Account Servicing Policies

16. Section 1951.911 is amended by revising paragraphs (a)(7)(iii), (a)(7)(iv), (b)(9), (b)(10), and (c) to read as follows:

§ 1951.911 Preservation Loan Service Programs.

(a) * * *

(7) * * *

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and credit sale processed in accordance with subpart C of part 1955 of this chapter or NP terms in accordance with subpart J of part 1951 of this chapter. The interest rate

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in subpart A of part 1943 of this chapter. If the value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over

$200,000, FmHA may finance the purchase of the property with a credit sale on NP terms in accordance with subpart J of part 1951 of the chapter. A credit sale on eligible terms and the remaining balance of ineligible term will NOT be made to the same applicant to purchase farm property.

* * * * *

(b) * * *

(9) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of part 1951 of this chapter.

(10) *Closing.* A credit sale will be closed in accordance with subpart J of part 1951 of this chapter.

* * * * *

(c) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of part 1951 of this chapter.

PART 1955—PROPERTY MANAGEMENT

17. The authority citation for part 1955 continues to read as follows:

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

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

18. Section 1955.2 is amended by revising the last sentence to read as follows:

§ 1955.2 Policy.

* * * Nonprogram (NP) loans, except for Community and Business Programs, will be liquidated as provided in subpart J of part 1951 of this chapter, unless specifically referenced in this subpart.

Subpart C—Disposal of Inventory Property

19. Section 1955.101 is amended by adding two sentences at the end of the section to read as follows:

§ 1955.101 Purpose.

* * * Credit sales of inventory property to ineligible (nonprogram (NP)) purchasers will be handled in accordance with subpart J of part 1951 of this chapter, except Community and Business Programs (C&BP) and Multi-Family Housing (MFH) which will be handled in accordance with this subpart. In addition, credit sales of Single Family Housing (SFH) properties converted to MFH will be handled in accordance with this subpart.

20. Section 1955.102 is amended by adding a sentence at the beginning of this section to read as follows:

§ 1955.102 Policy.

The terms "nonprogram (NP)" and "ineligible" may be used interchangeably throughout this subpart, but are identical in their meaning. * * *

21. Section 1955.108 is amended by revising paragraph (a) to read as follows:

§ 1955.108 Sale of surplus property (CONACT).

* * * * *

(a) *Rates and terms.* Rates and terms for Homestead Protection and Leaseback/Buyback will be in accordance with subpart S of part 1951 of this chapter. Except for C&BP properties, all surplus property will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. C&BP surplus property will be offered for cash or on ineligible terms of not less than 10 percent downpayment with the remaining balance amortized over a period not to exceed 25 years. The State Director will determine the loan terms for surplus property within these limitations. The interest rate for Business and Industry (B&I) property will be the established insured B&I rate for profit corporations plus ½ percent; for Community Programs property the interest rate will be the current market rate for Community Programs. A credit sale made on ineligible terms will be closed at the interest rate in effect at the time the credit sale was approved. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return for the Government. The term of financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

* * * * *

22. Section 1955.109 is amended by revising in the last sentence of paragraph (b) the words "or ineligible" to read "on ineligible" and by revising paragraphs (a), (c), (h), and (i) to read as follows:

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms, except for C&BP, will be handled in accordance with subpart J of part 1951 of this chapter. For C&BP, information will be provided which is similar to an application including financial information required for the respective loan program to establish financial stability, creditworthiness and repayment ability.

* * * * *

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA and handled in accordance with subpart B of part 1951 of this chapter.

* * * * *

(h) *Classification.* Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly.

(i) *State supplements.* A State supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser for C&BP will be issued with the advice and approval of OGC.

* * * * *

23. Section 1955.114 is amended by revising the second sentence in paragraph (a)(5) to read as follows:

§ 1955.114 Sales steps for program property (housing).

* * * * *

(a) * * *

(5) * * * Cash sales will be handled in accordance with § 1955.118 of this subpart and credit sales on NP terms will be made in accordance with subpart J of part 1951 of this chapter.

* * * * *

24. Section 1955.115 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1955.115 Sales steps for non program (NP) property (housing).

* * * * *

(a) *Single Family Housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash in accordance with § 1955.118 or credit on NP terms as provided in subpart J of part 1951 of this chapter. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for NP properties.

* * * * *

25. Section 1955.118 is amended by revising the heading and by revising paragraph (a), the introductory text of paragraph (b) and paragraphs (b)(2), (3), (4), (5), (6), (8)(iii) and (10) to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

(a) *Cash sales.* Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser Proceeds will be remitted in accordance with subparts B and K of part 1951 of this chapter.

(b) *Credit sales.* The following provisions apply to MFH credit sales on NP terms:

* * * * *

(2) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type property involved. Individual credit reports will be ordered for each individual applicant and each principal within an applicant entity in accordance with subpart B of part 1910 of this chapter. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity in accordance with subpart C of part 1910 of this chapter.

(3) *Approval.* Form FmHA 1944–51 will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(4) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to subpart B and K of part 1951 of this chapter.

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

(6) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

* * * * *

(8) * * *

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

* * * * *

(10) *Classification.* MFH credit sales on NP terms will be classified as NP loans and serviced accordingly.

* * * * *

26. Section 1955.119 is amended by revising the introductory text of the section and the introductory text of paragraph (d) to read as follows:

§ 1955.119 Sale of SFH inventory property to a public body or nonprofit organization.

Notwithstanding the provisions of § 1955.111 through § 1955.118 of this subpart, this section contains provisions for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for the homeless. A public body or nonprofit organization is a nonprogram applicant. All other SFH credit sales on nonprogram terms will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

(d) *Approval and closing.* Processing cash sales or MFH credit sales on nonprogram terms is according to § 1955.118 of this subpart, except as follows:

* * * * *

27. Section 1955.120 is amended by adding a sentence at the end of the section to read as follows:

§ 1955.120 Payment of points (housing).

* * * These payments will be handled in accordance with subpart B of part 1951 of this chapter.

28. Section 1955.123 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels;. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [* Refer to exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] For FP, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of Subpart A of Part 1901 of this chapter (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with subpart B of part 1900 of this chapter. Credit sales to ineligible purchasers of C&BP chattel property may be offered on terms of not less than 10 percent downpayment with the remaining balance amortized over a period not to exceed 5 years. The interest rate for ineligible purchasers of C&BP chattel property will be the current ineligible interest rate for FP property set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

District Directors and State Directors are authorized to approve or disapprove credit sales of C&BP chattel property on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of subpart A of part 1901 of this chapter (available in any FmHA office). For other than C&BP, credit sales to NP purchasers will be handled in accordance with Supbart J of Part 1951 of this chapter.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. Payments will be handled in accordance with subpart B of part 1951 of this chapter. If full payment is not received at the time of sale, the offer will be

documented by Form FmHA 1955–45 or FmHA 1955–46 where the chattel is sold jointly with real estate by regular sale.

* * * * *

PART 1962—PERSONAL PROPERTY

29. 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; 7 CFR 2.70

Subpart A—Servicing and Liquidation of Chattel Security

30. Section 1962.1 is amended by adding a sentence to the end of the section to read as follows:

§ 1962.1 Purpose.

* * * Security servicing for Nonprogram (NP) loans on farm property will be according to subpart J of part 1951 of this chapter.

31. Section 1962.34 is amended by adding in the last sentence of paragraph (d) the word "Part" before the word "1955"; by removing paragraph (e)(2); by redesignating paragraph (e)(3) as paragraph (e)(2); and by revising paragraph (b)(3) to read as follows:

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

* * * * *

(b) * * *

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1964–13. The Farmer Program NP interest rate for chattel property set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office), in effect at the time of loan approval, will be charged. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed.

* * * * *

PART 1965—REAL PROPERTY

32. 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; 7 CFR 2.70.

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

33. Section 1965.1 is revised to read as follows:

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests, and certain note-only cases for Farmers Home Administration (FmHA) Farmer Program (FP) loans. Security servicing for borrowers who have *both* FmHA FP and Single Family Housing (SFH) loans, (excluding Technical Assistance Grants and Site loans), will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans only, will be according to subpart C of part 1965 of this chapter. Security servicing for Nonprogram (NP) loan(s) on farm real estate and chattel property will be according to subpart J of part 1951 of this chapter. For borrowers who have both a FP and NP loan, security servicing will be in accordance with the applicable FP regulations and subpart J of part 1951 of this chapter. This subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, Irrigation and Drainage (I&D) loans, or Indian Tribal Land Acquisition loans.

§ 1965.12 [Amended]

34. Section 1965.2 is amended by redesignating paragraphs (a), (b), and (c) as (b), (c) and (d) respectively and by adding a paragraph (a) to read as follows:

§ 1965.2 General policies.

(a) The terms "nonprogram (NP)" and "ineligible" may be used interchangeably throughout this subpart but are identical in their meaning.

* * * * *

35. Section 1965.12 is amended by removing the first sentence of the introductory text and by removing the last sentence of paragraph (g).

36. Section 1965.13 is amended by revising the first sentence of the introductory text to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

See subpart S of part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. * * *

* * * * *

§ 1965.17 [Amended]

37. Section 1965.17 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

§ 1965.26 [Amended]

38. Section 1965.26 is amended by removing the heading of paragraph (e)(4)(i); by removing paragraph (e)(4)(ii); by redesignating paragraphs (e)(4)(i)(A), (B), and (C) as (e)(4)(i), (ii), and (iii), respectively; and by revising the words "(A) or (B) of this paragraph" in newly redesignated paragraph (e)(4)(iii) to read "paragraphs (e)(4)(i) or (ii) of this section".

39. Section 1965.27 is amended by revising the fifth sentence of the introductory text; by revising the last sentence of paragraph (c)(1)(ii); by revising paragraphs (c)(1)(iii)(C), (d), (f), (g)(4), and (g)(6)(i) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * Transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(c) * * *

(1) * * *

(ii) * * * See subpart J of part 1951 of this chapter.

(iii) * * *

(C) On ineligible rates and terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

* * * * *

(d) *Assumption of loans by ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt under paragraph (b)(5) or (c) of this section, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter.

* * * * *

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. When the transferor's remaining outstanding FmHA debt after a transfer and assumption exceeds $150,000, the Administrator or designee must approve the release of liability; otherwise, the State Director must approve or disapprove the release of liability. All cases requiring a release of liability will be submitted for review in accordance with Exhibit A of subpart B of part 1956 of this chapter (available in any FmHA office). When the total outstanding debt is not assumed and an FP borrower is to being released from liability, the borrower must be sent a letter similar to Exhibit F of subpart A of part 1955 of this chapter (available in any FmHA

office). SFH borrowers will be released from liability in accordance with § 1965.127 of subpart C of part 1965 of this chapter. In FP cases, the County Committee must take certain action if it is to recommend that the transferor(s) and any cosigner be released from liability. They must determine that the transferor(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer; that the transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security. This action will be documented by checking the appropriate block on Form FmHA 440–2, "County Committee Certification or Recommendation," as specified in the Forms Manual Insert.

(g) * * *

(4) *Farms and Home plans and financial statements.* When an assumption will be for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 1944–3 or FmHA 431–2 or other plan of operation acceptable to FmHA.

* * * * *

(6) * * *

(i) The transfer will be contingent upon the County Committee certification on Form FmHA 440–2 for an eligible applicant. This action will be documented by checking the appropriate block on Form FmHA 440–2, as specified in the Forms Manual Insert.

* * * * *

§ 1965.31 [Amended]

40. Section 1965.31 is amended in paragraph (c) by revising the words "Real Estate Mortgage for _____" to read "Real Estate Mortgage or Deed of Trust for _____(Insured Loans to Individuals)".)

§ 1965.34 [Removed and reserved]

41. Section 1965.34 is removed and reserved.

Subpart C—Security Servicing for Single Family Rural Housing Loans

42. Section 1965.101 is amended by adding a sentence at the end of the section to read as follows:

§ 1965.101 Purpose.

* * * Security servicing for Nonprogram (NP) loans on a single family residence will be according to subpart J of part 1951 of this chapter.

43. Section 1965.104 is amended by revising paragraph (c)(2) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(c) * * *

(2) *Junior lien foreclosure.* When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser on program terms subject to the provisions of § 1965.126(c) or NP terms as provided in subpart J of part 1951 of this chapter; otherwise the FmHA loan will be liquidated.

* * * * *

§ 1965.105 [Amended]

44. Section 1965.105 is amended by revising in the last sentence of the introductory text the words "paragraphs (a), (b), and (c)" to read "paragraphs (a) and (b)"; by removing paragraph (c); and by redesignating paragraphs (d) and (e) as (c) and (d), respectively.

45. Section 1965.125 is amended by revising paragraph (a)(2)(iv) and by adding a paragraph (a)(2)(v) to read as follows:

§ 1965.125 Liquidation.

(a) * * *

(2) * * *

(iv) *Release of security instruments.* When consent under this paragraph is given, FmHA will release its security instrument(s).

(v) *Unsatisfied account balances.* Servicing unsatisfied account balances is covered in § 1965.127 of this subpart.

* * * * *

46. Section 1965.126 is amended by revising the introductory text; by revising the last sentence of the introductory text of paragraph (b)(1); by revising paragraph (b)(3); by revising the second sentence of the introductory text of paragraph (b)(4)(ii); and by revising paragraph (d) to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on program or NP terms, as applicable. Approval on program terms will be subject to the provisions of paragraph (c) of this section and NP terms will be as provided in subpart J of part 1951 of this chapter. Assumptions under paragraphs (b)(12) and (c)(2) of this section *only* are authorized on existing terms without considering the assuming party's eligibility for program assistance. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

* * * * *

(b) * * *

(1) * * * The following loans may be assumed on program terms under paragraph (c) of this section or NP terms in accordance with subpart J of part 1951 of this chapter:

* * * * *

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in subpart A of part 1944 of this chapter, a determination must be made by FmHA as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the property may be retained in the SFH program provided the entire property is modest in cost compared to a similar house on a minimum-adequate site in the area. When only a portion of the security property is being transferred to the party assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the remaining debt of the transferor will be reclassified as NP and reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner, using the NP interest rate for a single family residence. FmHA will retain its security position on the portion of property retained by the transferor until the balance not assumed is repaid.

(4) * * *

(ii) * * * In those instances, assumption may be on NP terms only, in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(d) *Assumption on NP terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suited for retention in the housing program, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter.

* * * * *

Dated: June 29, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–24834 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–07–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is repealing provisions of its regulations on the ethical conduct of employees. These provisions are superseded by Office of Government Ethics ("OGE") rules set forth in 5 CFR part 2635 and part 2634. In a related action, the Commission is today issuing jointly with OGE supplemental regulations which the Commission has determined are necessary and appropriate to fulfill the purposes of part 2635. These supplemental regulations will be codified in 5 CFR part 5100 of chapter XLI, and concern restrictions on financial interests and transactions and on outside employment and activities.

The Commission is not repealing those provisions of its conduct regulations in 17 CFR part 140 which the CFTC has authority to issue independent of the OGE ethics rules. These provisions will continue to apply to the conduct of Commission members and employees. The Commission is, however, revising certain aspects of these rules to conform to current agency administrative practice and to reflect statutory and regulatory changes that have occurred since Subpart C of part 140 was last amended.

This action relates solely to the Commission's organization, procedure, and practice.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Gasteiger, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE issued new Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. These standards of conduct, effective February 3, 1993, supersede the Commission's part 140 conduct regulations promulgated pursuant to 5 CFR part 735. The new standards also authorize agencies to issue (jointly with OGE) "supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes" of part 2635.

Accordingly, the Commission is repealing those provisions of part 140 that have been superseded: §§ 735–2 through 735–3, 735–5 (other than paragraph (a)(1)), 735–6, 735–8, 735–11, and 735–13 through 735–15. In connection with the repeal of most of § 735–5 (Non-governmental employment and other outside activity), the CFTC is jointly issuing with OGE a regulation that will supplement 5 CFR part 2635 Subpart H (Outside Activities). As is the case under existing § 735–5, the supplemental regulation sets forth procedures for CFTC employees to obtain prior approval of certain outside activities. The rule also includes exceptions, under specified circumstances, for special government employees that were formerly contained in § 735–13.

Additionally, the Commission is repealing § 735–7 (Statement of financial interests and outside employment; certification of compliance) to reflect OGE rules in 5 CFR part 2634, which, effective October 5, 1992, superseded the prior executive branch confidential reporting regulations at 5 CFR part 735, subpart D, § 735.106, and agencies' implementing regulations. Further, in connection with the repeal of § 735–13, which applied to special government employees, the obligation of such employees to file financial disclosure reports is also covered by OGE rules codified in 5 CFR part 2634.

As noted above, the government-wide conduct regulations issued by OGE do not supersede regulations that an agency has separate authority, independent of 5 CFR part 2635, to issue. Accordingly, the Commission is retaining 17 CFR 735–1 (Authority and purpose), 735–4 (restrictions on business and financial transactions and interests), 735–5(a)(1) (restrictions on accepting employment or compensation from persons regulated by the Commission), 735–8A (Receipt and disposition of foreign gifts and decorations), 735–9 (Disclosure of information), 735–10 (Practice by former members and employees of the Commission), 735–12 (Statutory violations applicable to conduct of Commission members and employees), and 735–16 (Interpretative and advisory service). These provisions have been renumbered and, in some cases, revised to reflect recent amendments to the Commodity Exchange Act and other pertinent statutes.

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. Since the OGE rules became effective on October 5, 1992 and February 3, 1993, the Commission further finds that there is good cause to make these rules effective upon publication in the **Federal Register.**

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of these regulations since they relate solely to agency procedure or practice.

Paperwork Reduction Act

The Paperwork Reduction Act of 1989 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that this rulemaking does not impose any information collection requirements as defined by the PRA.

List of Subjects in 17 CFR Part 140

Conflict of interests, Ethics, Organizations and functions.

PART 140—[AMENDED]

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

1. The authority citation for part 140, subpart C, is revised to read as follows:

Authority: 7 U.S.C. 4a (f) and (j), 12a(5), and 13.

2. Section 140.735–1 is revised to read as follows:

§ 140.735–1 Authority and purpose.

This subpart sets forth specific standards of conduct required of members, employees, and special government employees, and regulations concerning former members, employees, and special government employees of the Commodity Futures Trading Commission. These rules are separate from and in addition to the Office of Government Ethics' conduct rules, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Commission's supplemental rules set forth in 5 CFR part 5100. In addition, this subpart contains references to various statutes governing employee conduct in order to aid members and employees in their understanding of statutory restrictions and requirements.[1]

§§ 140.735–2, 140.735–3 [Removed]

3. Sections 140.735–2 and 140.735–3 are removed.

4. Section 140.735–4 is redesignated Section 140.735–2 and revised to read as follows:

§ 140.735–2 Business and financial transactions and interests.

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee, including transactions for the account of other persons effected by the member or employee, directly or indirectly under a power of attorney or otherwise. Since this section applies to "indirect" participation in transactions, a member or employee is considered to have sufficient interest in the transactions of the spouse or minor child of the member or employee, or other relatives who are residents of the immediate household of the member or employee, so that such transactions must be reported and, absent compelling countervailing reasons, are subject to all the terms of this section.

(b) *Prohibitions.* No Commission member or employee shall:

(1) Participate, directly or indirectly, in any transaction—

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii) of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage and the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (*e.g.*, a mutual fund) or similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1 per cent of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;[2]

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if:

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;[3]

(3) Have a beneficial interest, through ownership of securities or otherwise, in any person[4] regulated by the Commission,[5] such as a contract market or clearinghouse or member thereof, a registered futures commission merchant,[6] any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor or commodity pool operator, or any other person required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or

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[1] These references, however, do not purport to cover all restrictions and requirements, and the paraphrased restatements of statutory provisions, such as that of 18 U.S.C. 201, *et seq.*, appearing in this subpart C, are not intended to be, and should not be construed as, verbatim quotations of the law. The statutory text should be consulted in any situation in which it might apply.

[2] Attention is directed to section 9(c) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly, in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commission member or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

[3] Attention is directed to section 9(c) of the Commodity Exchange Act which provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735–8 of this subpart for information regarding interpretative and advisory service by the General Counsel of the Commission.

[4] As defined in section 1a(16) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a "person" includes an individual, association, partnership, corporation, and a trust.

[5] Attention is directed to sections 2(a)(7) and 9(c) of the Commodity Exchange Act. See footnotes 1, 2, and 8 to this subpart.

[6] This provision does not, however, preclude a member or employee from carrying securities on margin, pursuant to customary margin requirements, with a broker who is also a registered futures commission merchant, or engaged in the trading of commodity options, or commodity leverage transactions.

regulation promulgated by the Commission;

(4) Have a significant beneficial interest, through ownership of securities or otherwise, in any other person required to file reports under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;[7] or

(5) Purchase or sell any securities of a company which, to his knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party; or

(iii) Other matter under consideration by the Commission that could significantly affect the company.

5. Section 140.735–5 is redesignated 140.735–3 and revised to read as follows:

§ 140.735–3 Non-governmental employment and other outside activity.

A Commission member or employee shall not accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.[8]

§§ 140.735–6–140.735–8 [Removed]

6. Sections 140.735–6 through 140.735–8 are removed.

§ 140.735–8A [Redesignated as § 140.735–4]

7. Section 140.735–8A Receipt and disposition of foreign gifts and decorations is redesignated § 140.735–4.

§ 140.735–9 [Redesignated as § 140.735–5]

8. Section 140.735–9 is redesignated § 140.735–5 and revised to read as follows:

§ 140.735–5 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release.[9] Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations.[10] Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest.[11] In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

§ 140.735–10 [Redesignated as § 140.735–6]

9. Section 140.735–10 is redesignated § 140.735–6 and revised to read as follows:

§ 140.735–6 Practice by former members and employees of the Commission.

(a) Personal and substantial participation or nonpublic knowledge of a particular matter. No person who has been a member or employee of the Commission shall ever knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with any particular matter involving a specific party or parties[12] in which such person, or one participating with him or her in the particular matter, participated personally and substantially, or gained nonpublic knowledge of facts thereof, while with the Commission.[13]

(b) Particular matter under an individual's official responsibility. No person who has been a member or employee of the Commission shall,

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[7] For purposes of this section, the Office of the General Counsel normally views "significant" ownership as being 10 per cent or more of the outstanding securities of a firm or a $25,000 total investment in a firm, regardless of the percentage of stock owned. The Office has also noted that each investment must be considered on a case-by-case basis and that an investment level in excess of $25,000 may not be "significant" in the case of a large company.

[8] Attention is directed to section 2(a)(7) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

[9] Attention is directed to section 9(d) of the Commodity Exchange Act, which provides that it shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity future or commodity and which information has not been promptly made public, to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, or under any contract or other arrangement that the Commission determines to serve the same function or is marketed in the same manner as such standardized contract, and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any of the foregoing transactions.

[10] No employee shall disclose such information unless directed to do so by the Commission.

[11] The prohibitions regarding confidential or nonpublic information stated above are intended to cover the matters addressed in sections 4(c), 8, and 9(d) of the Commodity Exchange Act as well as nonpublic information under the Freedom of Information Act, 5 U.S.C. 552, the rules of the Commission thereunder, 17 CFR Part 145, the Privacy Act, 5 U.S.C. 552a, the rules of the Commission thereunder, 17 CFR Part 146, and cases where, apart from specific prohibitions in any statute or rule, the disclosure or use of such information would be unethical.

[12] The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. *See* § 2637.201(c)(1) of the regulations of the Office of Government Ethics, 5 CFR 2637.201(c)(1); *cf.*, memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (reproduced following 18 U.S.C. 201).

[13] Attention is directed to 18 U.S.C. 207(a)(1), as amended, which generally prohibits former Federal officers and employees permanently from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government.

within two years after that employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with a particular matter involving a specific party or parties which was actually pending under his official responsibility as a member or employee of the Commission at any time within one year prior to the termination of government service.[14]

(c) Restrictions on former members and senior employees. A former member or employee of the Commission who occupied a "senior" position specified in 18 U.S.C. 207(c)(2), as amended, shall not within one year after such "senior" employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission on behalf of any other person in connection with any matter in which such person seeks official action by the Commission.[15]

[14] Attention is directed to 18 U.S.C. 207(a)(2), as amended. Section 207(a)(2) generally prohibits former Federal officers and employees, within two years after their Federal employment has ceased, from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of government service.

As used in paragraph (b) of this section, the term "official responsibility" has the meaning assigned to it in 18 U.S.C. 202(b), namely, the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

[15] Attention is directed to 18 U.S.C. 207(c), as amended, which places restrictions on the representational activities of certain senior officers and employees after their departure from a senior position. Section 207(c) generally makes it unlawful for one year after service in a "senior" position terminates for a former "senior" Federal employee to knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one year period prior to termination from "senior" service, if that communication or appearance is on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Note that the one year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. This provision prohibits communications to or appearances before the Government and does not prohibit "behind-the-scenes" assistance. The restriction does not require that the former employee has ever been in any way involved in the matter that is the subject of the communication or appearance. The restriction applies with respect to any matter, whether or not involving a specific party.

(d) Exceptions. The prohibitions contained in paragraphs (a), (b), and (c) of this section do not apply to communications solely for the purpose of furnishing scientific or technological information if approved by the Commission or generally to giving testimony under oath or making a statement which is subject to penalty or perjury. Further, the prohibition contained in paragraph (c) of this section does not apply to an uncompensated statement in a particular area within the special knowledge of the former Commission member or employee.[16]

(e) Reporting requirement. Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person (except the United States) in connection with a matter in which it is contemplated that he will appear before or communicate with the Commission shall, within ten days of such retainer or employment, or of the time when appearance before or communication with the Commission is first contemplated, file with the General Counsel of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirement of this paragraph does not apply to communications incidental to court appearances in litigation involving the Commission.

(f) Definitions. As used in this section, the phrase "appearance before the Commission" means any formal or informal appearance on behalf of any person (except the United States) before the Commission, or any member or employee thereof with an intent to influence. As used in this section, the phrase "communication with the Commission" means any oral or written communication made to the Commission, or any member or employee thereof, on behalf of any person (except the United States) with an intent to influence.

(g) Advisory ruling. Persons in doubt as to the applicability of this section may apply for an advisory ruling by addressing a letter requesting such a ruling to the General Counsel.

(h) Procedures for administrative enforcement of statutory restrictions on post-government employment conflicts of interest.[17] (1) Scope. The provisions of this paragraph prescribe procedures for administrative enforcement of the restrictions which 18 U.S.C. 207 (a), (b), and (c), as amended, place on appearances before or communications with Federal (and District of Columbia) departments, agencies and courts, and other enumerated entities, as well as the officers and employees thereof, by former Commission members and employees.

(2) Investigations. The General Counsel of the Commission, or his or her designee, shall conduct such investigations as he or she deems appropriate to determine whether any former Commission member or employee have violated 18 U.S.C. 207 (a), (b) or (c), as amended. The General Counsel shall report the results of his or her investigations to the Commission and shall recommend to the Commission such action as he or she deems appropriate.

(3) Hearings. Hearings required to be held under the provisions of this section shall be held before an Administrative Law Judge, utilizing the procedures prescribed by the Commission's rules of practice for adjudicatory proceedings (17 CFR Part 10), except to the extent that those rules are inconsistent with the provisions of this section. Any proceeding brought under the provisions of this section shall be prosecuted by the General Counsel or his or her designee.

(4) Sanctions. If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may prohibit that person from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 140.735–11 [Removed]

10. Section 140.735–11 is removed.

§ 140.735–12 [Redesignated as § 140.735–7]

11. Section 140.735–12 is redesignated § 140.735–7 and revised to read as follows:

[16] Attention is directed to 18 U.S.C. 207(j), as amended (listing other exceptions). Self-representation is not prohibited under Section 207.

[17] This section does not apply to employees who leave service after December 31, 1990.

§ 140.735–7 Statutory violations applicable to conduct of Commission members and employees.

A violation of Section 2(a)(7), 8 or 9 (c) or (d) of the Commodity Exchange Act, as amended, shall be deemed to be a violation of this subpart as well.

§§ 140.735–13—140.735–15 [Removed]

12. Sections 140.735–13 through 140.735–15 are removed.

§ 140.735–16 [Redesignated as § 140.735–8]

13. Section 140.735–16 is redesignated § 140.735–8 and revised to read as follows:

§ 140.735–8 Interpretative and advisory service.

(a) *Counselor for the Commission.* The General Counsel, or his or her designee, will serve as Counselor for the Commission and as the Commission's representative to the Office of Government Ethics, on matters covered by this subpart. The General Counsel will also serve as the Commission's designated agency ethics official to review the financial reports filed by high-level Commission officials under Title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

(b) *Duties of the Counselor.* The Counselor shall:

(1) Coordinate the agency's counseling services and assure that counseling and interpretations on questions of conflict of interests and other matters covered by the regulations in this subpart are available as needed to Regional Deputy Counselors, who shall be appointed by the General Counsel, in coordination with the Chairman of the Commission, for each Regional Office of the Commission;

(2) Render authoritative advice and guidance on matters covered by the regulations in this subpart which are presented to him or her by employees in the Washington, D.C. headquarters office; and

(3) Receive information on, and resolve or forward to the Commission for consideration, any conflict of interests or apparent conflict of interests which appears in the Statements of Employment and Financial Interests submitted under this subpart, which is not resolved by the Director of Personnel, and any other conflict of interests or apparent conflict of interests which otherwise appears.

(c) *Regional Deputy Counselors.* Regional Deputy Counselors shall:

(1) Give advice and guidance as requested to the employees assigned to their respective Regional Offices; and

(2) Receive information on and refer to the Director of Personnel, any conflict of interests or appearance of conflict of interests in Statements of Employment and Financial Interests submitted by employees to whom they are required to give advice and guidance.

(d) *Confidentiality of communications.* Communications between the Counselor and Regional Deputy Counselors and an employee shall be confidential, except as deemed necessary by the Commission or the Counselor to carry out the purposes of this subpart and of the laws of the United States.[18]

(e) *Furnishing of conduct regulations.* The Director of Personnel shall furnish a copy of this Conduct Regulation to each member, employee, and special government employee immediately upon his or her entrance on duty and shall thereafter, annually, and at such other times as circumstances warrant, bring to the attention of each member and employee this Conduct Regulation and all revisions thereof.

(f) *Availability of counseling services.* The Director of Personnel shall notify each member, employee, and special government employee of the availability of counseling services and of how and where these services are available at the time of entrance on duty and periodically thereafter.

Issued in Washington, DC, on September 27, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–24656 Filed 10–8–93; 8:45 am]

BILLING CODE 6351–01–M

[18] No attorney-client privilege, however, attaches to such communications since the Counselors are counsel to the Commission, not to the employee. Thus, any evidence of criminal law violations divulged by an employee to the Counselor must be reported by the latter to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–8–000]

Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act

Issued October 4, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending certain regulations and removing certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). Section 5 of the OCSLA requires open access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS).

Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program, and the regulation which provides for abandonment authority. In Order No. 636, the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. Hence, the Commission proposes to remove the Order No. 509 capacity allocation regulations.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Connie Caldwell, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order No. 559

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending certain regulations and removing certain