

PART 1955 - PROPERTY MANAGEMENT

Subpart C - Disposal of Inventory Property

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PART 1955 - PROPERTY MANAGEMENT

Subpart C - Disposal of Inventory Property

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights and chattels. It also covers the granting of easements and rights-of-way on inventory property. 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. This subpart does not apply to Farm Service Agency, Farm Loan Programs, Single Family Housing (SFH) inventory property or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing Programs. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, or Resource Conservation and Development loans, which are serviced under part 1782 of this title. (Revised 01-09-08, PN 417.)

§ 1955.102 Policy.

The terms "nonprogram (NP)" and "ineligible" may be used interchangeably throughout this subpart, but are identical in their meaning. Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that it will enable a qualified applicant for one of the applicable loan programs to meet the objectives of that loan program, preference will be given to program applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: (RH) property; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed. (Revised 08-20-97, PN 280.)

§ 1955.103 Definitions. As used in this subpart, the following apply:

Approval official. The Agency official having loan and grant approval authority authorized under Subpart A of Part 1901 of this chapter.

 DISTRIBUTION: WSAL

 Account Servicing
 Property Management

Auction sale. A public sale in which property is sold to the highest bidder in open verbal competition.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity applicant who: (Revised 09-30-93, SPECIAL PN.)

- (1) Is an eligible applicant for FO loan assistance in accordance with § 1943.12 of Subpart A of Part 1943 of this chapter or § 1980.180 of Subpart B of Part 1980 of this chapter.
- (2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.
- (3) Will materially and substantially participate in the operation of the farm or ranch.
 - (i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.
 - (ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.
- (4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by Agency regulations.
- (5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm

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or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Director will publish State supplements containing the average farm or ranch acreage by county. (Revised 12-07-05, PN 392.)

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FSA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FSA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FSA debt. (Added 09-30-93, SPECIAL PN.)

Capitalization value. The value determined in accordance with Subpart E of Part 1922 of this chapter. (Revised 08-25-93, PN 211.)

Closing agent. An attorney or title insurance company approved to close loans according to Subpart B of Part 1927 of this chapter. (Revised 03-31-92, SPECIAL PN.)

CONACT or CONACT property. Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FSA. (Revised 8-25-88, SPECIAL PN.)

Credit sale. A sale in which financing is provided by the Agency to an applicant for the purchase of inventory property.

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

- (1) Are structurally sound and habitable,
- (2) Have potable water supply,
- (3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems,
- (4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this chapter, and
- (5) Are safe; that is, a hazard does not exist that would endanger the safety of dwelling occupants.

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

Farmer program loans. This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) and Rural Housing loans for farm service buildings (RHF). (Added 10-14-88, SPECIAL PN.)

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Homestead Protection. (FP only) The program which permits former farmer Program borrowers to lease their former principal residence with an option to buy. See Subpart S of part 1951 of this chapter. (Added 10-14-88, SPECIAL PN.)

Indian reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian tribe. (Added 10-14-88, SPECIAL PN.)

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

Inventory property. Property for which title is vested in the Government and which secured an Agency loan or which was acquired from another Agency for program purposes.

Market value. The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

Negotiated sale. A sale in which there is a bargaining of price and/or terms.

Nonprogram (NP) property. SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the requirements for existing housing as described in 7 CFR 3550. It may contain a structure which would meet program standards, however is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

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

Organization property. Property for which the following loans were made is considered organization property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-in-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property. (Revised 8-25-88, SPECIAL PN.)

Owner. (FP only) An individual or an entity which owned the farm but who may or may not have been operating the farm at the time the farm was taken into inventory. (Added 10-14-88, SPECIAL PN.)

Participating broker. A duly licensed real estate broker who has executed a listing agreement with the Agency.

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

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

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

Safe. No hazard exists on property which would likely endanger the health or safety of occupants or users.

Sealed bid sale. A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

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

Socially disadvantaged applicant (SDA). An applicant who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as a member of a group, without regard to their individual qualities. For entity SDA applicants, the majority interest in the entity must be held by socially disadvantaged individuals. The Agency has identified socially disadvantaged groups as Women, Blacks, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. (Added 12-31-03, PN 368.)

Suitable property. For FSA inventory property, real property that can be used for agricultural purposes, including those farm properties that may be used as a start-up or add-on parcel of farmland. It would also include a residence or other off-farm site that could be the base for a farming operation. It would also include a residence or other off-farm site that could be used as a basis for a farming operation. For Agencies other than FSA, real property that could be used to carry out the objectives of the Agency's loan program with financing provided through that program. (Revised 08-20-97, PN 280.)

Surplus property. For FSA inventory property, real property that cannot be used for agricultural purposes including nonfarm properties. For other Agencies, property that cannot be used to carry out the objectives of financing available through the applicable loan program. (Revised 08-20-97, PN 280.)

§ 1955.104 Authorities and responsibilities.

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

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

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

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

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

(b) Responsibility.

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

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

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

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

(c) Bid or offer acceptance. The servicing official has the authority to offer for sale, accept and/or reject bids or offers for inventory property regardless of amount. Any credit request, however, must be approved by an approval official within his/her respective loan approval authority as outlined in the applicable Exhibits of RD Instruction 1901-A, or FSA Handbook 1-FLP for FLP. (Revised 05-16-01, PN 332.)

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT (CONACT) REAL PROPERTY

§ 1955.105 Real property affected (CONACT). (Revised 10-14-88, SPECIAL PN.)

(a) Loan types. Sections 1955.106 - 1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Resource Conservation and Development (RC&D); Watershed (WS); Association Recreation; EOC; Rural Renewal; Water Facility; Business and Industry (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporations (NNC); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Homestead protection, as set forth in Subpart S of part 1951 of this chapter, is only applicable to Farmer Program loans as defined in § 1955.103 of this Subpart. (Revised 08-20-97, PN 280.)

(b) Controlled substance conviction. In accordance with the Food Security Act of 1985 (Public Law 99.198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted 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 to Subpart A of part 1941 of this chapter and is available in any Agency office, for the definition of "controlled substance") prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form RD 410-1, "Application for RD Services," that as individuals or that its member, if an entity, have not been convicted of such crime after December 23, 1985.

(c) Effects of farm property sales on farm values. State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FSA farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this Part until such time that a subsequent analysis indicates otherwise. The State Director will notify, in writing, the County Supervisor(s) servicing those areas

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that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

- (1) The number of farms and acres that FSA expects to acquire in inventory.
 - (2) The number of farms and acres other lenders expect to acquire in inventory.
 - (3) The number of farms and acres that FSA currently has in inventory.
 - (4) The number of farms and acres other lenders currently have in inventory.
 - (5) The number of farms not included in paragraphs (c)(3) and (c)(4) of this section which are currently listed for sale. (Revised 05-07-92, SPECIAL PN.)
 - (6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.
- (d) Highly erodible land. If farm inventory property contains "highly erodible land" as determined by the NRCS, the lease must include conservation practices specified by the NRCS and approved by FSA as a condition for leasing. Refer to § 1955.137(d) of this subpart for implementation requirements. (Revised 08-20-97, PN 280.)

§ 1955.106 Disposition of farm property. (Revised 08-20-97, PN 280.)

- (a) Rights of previous owner and notification. Before property which secured a Farm Credit Programs loan is taken into inventory, the county official will advise the borrower-owner of Homestead Protection rights (see Subpart S of part 1951 of this chapter). (Revised 08-20-97, PN 280.)
- (b) Racial and ethnic consideration. The County Supervisor will make a special effort to insure that prospective purchasers, who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial, ethnic, or gender prejudice, are informed of the availability of the Socially Disadvantaged Program. Emphasis will be placed on providing assistance to such socially disadvantaged applicants in accordance with the applicable sections of Subpart A of Part 1943 of this chapter. (Revised 11-03-93, SPECIAL PN.)

(c) Nonprogram (NP) borrowers. Non Program (NP) borrowers are not eligible for Homestead Protection provisions as set forth in Subpart S of part 1951 of this chapter. When it is determined that all conditions of § 1951.558(b) of Subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and will be eligible for homestead protection.

§ 1955.107 Sale of FSA property (CONACT). (Revised 08-20-97, PN 280.)

FSA inventory property will be advertised for sale in accordance with the provisions of this subpart. If a request is received from a Federal or state agency for transfer of a property for conservation purposes, the property should not be advertised until the request can be fully considered. Real property will be managed in accordance with the provisions of Subpart B of this part until sold.

(a) Suitable Property. Not later than 15 days from the date of acquisition, the Agency will advertise suitable property for sale. For properties currently under lease, except leases to beginning farmers and ranchers under § 1955.66(a)(2)(iii) of Subpart B of this part, the property will be advertised for sale not later than 60 days after the lease expires. There will be a preference given to beginning farmers or ranchers. The advertisement will contain a provision to lease the property to a beginning farmer or rancher for up to 18 months should FSA credit assistance not be available at the time of sale. The first advertisement will not be required to contain the sales price but it should inform potential beginning farmers or ranchers applicants that applications will be accepted pending completion of the advertisement process. When possible, the sale of suitable CONACT property should be handled by county officials. The date Form RD 1955-40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, two weekly advertisements in at least two newspapers that are widely circulated in the area in which the farm is located. Consideration should also be given to advertising inventory properties in major farm publications. Also, either Form RD 1955-40 or Form RD 1955-41, "Notice of Sale," will be posted in a prominent place in the County Office. When requested by the County official, State Office Farm Credit Programs staff will assist in publicizing property for sale by informing other County, District, or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this Subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian

§ 1955.107(a) (Con.)

governing bodies having jurisdiction over Indian reservations as defined in § 1955.103 of this Subpart shall be responsible for notifying those parties listed in § 1955.66(d)(2) of Subpart B of this part. See § 1955.106(b) for the Agency's responsibilities regarding racial and ethnic consideration.

(1) Price. Property will be advertised for sale for its appraised market value based on the condition of the property at the time it is made available for sale. The market value will be determined by an appraisal made in accordance with FSA Handbook 1-FLP. Property contaminated with hazardous waste will be appraised "as improved" which will be used as the sale price for advertisement to beginning farmers or ranchers. (Revised 04-19-00, PN 319.)

(2) Selection of purchaser. After homestead protection rights have expired, suitable farmland must be sold in the priority outlined in this paragraph. When farm inventory property is larger than family size, the property will be subdivided into suitable family size farms pursuant to § 1955.140 of this Subpart.

(i) Sale to beginning farmers/ranchers. Not later than 135 days from the date of acquisition, FSA will sell suitable farm property, with a priority given to applicants who are classified as beginning farmers or ranchers, as defined in § 1955.103, as of the time of sale. (Revised 09-10-03, PN 363.)

(ii) Random selection. The County official will first determine whether applicants meet the eligibility requirements of a beginning farmer or rancher. For applicants who are not determined to be beginning farmers or ranchers, they may request that the State Executive Director provide an expedited review and determination of whether the applicant is a beginning farmer or rancher for the purpose of acquiring inventory property. This review shall take place not later than 30 days after denial of the applicant's application. The State Executive Director's review decision shall be final and is not administratively appealable. When there is more than one beginning farmer or rancher applicant, the Agency will select by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn name will be held as backups pending sale to the successful applicant. Prospective purchasers of suitable farmland and other interested parties may attend the random selection drawing.

(iii) Notification of applicants not selected to purchase suitable farmland. When the Agency selects an applicant to purchase suitable farmland, in accordance with this paragraph, all applicants not selected will be notified in writing that they were not selected. The random selection by lot is not appealable.

(3) Credit sale procedure. Subject to the availability of funds, credit sales to program applicants will be processed as follows:

(i) Form RD 1955-45, "Standard Sales Contract - Sale of Real Property by the United States," will be used to document the offer and acceptance for regular Agency sales.

(ii) The Agency will certify to the applicant's eligibility on Form FSA 440-2, "Eligibility Certification or Recommendation," in accordance with program eligibility requirements when required by the Agency regulation that applies to the appropriate loan program.

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

(iv) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. All prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property. (Revised 09-19-18, PN 516).

(v) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(A) Form RD 1955-49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of the General Counsel (OGC) will be used.

§ 1955.107(a)(3)(v) (Con.)

(B) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(vi) When the transaction is closed, the responsible Agency official will prepare and distribute Form RD 1955-50A, "Advice of Inventory Property Sold - Credit Sale," according to the Forms Manual Insert (FMI).

(vii) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property.

(b) Surplus property and suitable property not sold to a beginning farmer or rancher. Except where a lessee is exercising the option to purchase under the Homestead Protection provision of subpart S of part 1951 of this chapter, surplus property will be offered for public sale by sealed bid or auction within 15 days from the date of acquisition in accordance with § 1955.147 or § 1955.148. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with paragraph (a) of this section, but has not sold within 135 days from the date of acquisition will be offered for public sale by sealed bid or auction to the highest bidder as provided in paragraph (b)(1) of this section. If a request is received from a Federal or State agency for transfer of a property for conservation purposes, the property should not be advertised until the request can be fully considered. On a credit sale, the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of part 1940 of this chapter. All prospective buyers will be notified in writing as part of the property advertisement of the presence of any highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property. (Revised 09-10-03, PN 363.)

(1) Advertising sale of property. When possible, the sale of CONTACT property should be handled by Authorized Agency Officials and District Directors. FSA will advertise surplus property for sale by sealed bid or auction within 15 days from the date of acquisition or, for those suitable properties not sold to beginning farmers or ranchers in accordance with this section, within 135 days of the date of acquisition. The Agency will publish as a minimum, two weekly advertisements in at least two newspapers that are widely circulated in the area in which the property is located. Consideration should also be given to advertising inventory properties in major farm publications. Also, either Form RD 1955-40 or Form RD 1955-41 will be posted in a prominent place in the County Office.

(2) Sale by sealed bid or auction. Surplus real estate must be offered for public sale by sealed bid or auction and must be sold no later than 165 days from the date of acquisition to the highest bidder. The State Executive Director will determine the method of sale. Preference will be given to a cash offer which is at least *percent of the highest offer requiring credit. (*Refer to Exhibit B of RD Instruction 440.1 [available in any Agency office] for the current percentage.) Equally acceptable sealed bid offers will be decided by lot. (Revised 09-10-03, PN 363.)

(3) Negotiated sale. If no acceptable bid is received from a sealed bid or auction, the State Executive Director will sell real property at the maximum price obtainable without further public notice by negotiating with interested parties, including all previous bidders. The rates and terms offered through negotiation will be within the limitations of paragraph (a)(4) of this section. A sale made through negotiation will be documented and accepted by the approval official on Form RD 1955-46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with a bid deposit of not less than ten percent (10%) of the negotiated price in the form of a cashier's check, certified check, postal or bank money order, or bank draft payable to FSA, plus any other conditions relating to acceptance. Preference will be given to a cash offer which is at least _____* percent of the highest offer requiring credit. [*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.] Equally acceptable offers will be decided by lot.

§ 1955.107(b)(3) (Con.)

(i) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(ii) If an offer represents the best price obtainable, the approval official will accept it immediately; however, if a credit sale is involved, this acceptance will be subject to confirmation of the purchaser's repayment ability. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other party except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(iii) Advertising will be ordered in accordance with RD Instruction 2024-A.

(4) Rates and terms. Subject to the availability of funds, rates and terms for Homestead Protection will be in accordance with Subpart S of part 1951 of this chapter. Sales of suitable property offered to program eligible applicants will be on rates and terms provided in Subpart A of part 1943 of this chapter. Surplus property and suitable property which has not been sold to program eligible applicants will be offered for cash or on ineligible terms in accordance with Subpart J of part 1951 of this chapter. 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 Executive 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.

RD Instruction 1955-C
§ 1955.107 (Con.)

(c) Sale through real estate brokers. The State Executive Director may authorize the use of real estate brokers to sell FSA CONACT real property at the market value in accordance with § 1955.130 of this Subpart only after the conditions outlined in this paragraph have been met. The conditions are:

- (1) The State Director has determined that the property cannot be sold by FSA employees;
- (2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received; and
- (3) Any negotiations have been terminated.

§ 1955.108 Sale of (CONACT) property other than FSA property.
(Revised 08-20-97, PN 280.)

Program officials will immediately contact the National Office whenever they acquire real property to obtain further instructions on the time frames and procedures for advertising and disposing of such property.

§ 1955.109 Processing and closing (CONACT). (Renumbered 10-14-88, SPECIAL PN.)

(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 FSA 431-2, "Farm and Home Plan," should be used for all eligible FSA 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 FSA 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. (Revised 11-12-93, SPECIAL PN.)

§1955.109 (Con.)

(b) Credit sale approval authority for Farm Credit Programs loans. 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. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales 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. (Revised 06-28-95, PN 247.)

(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 the Agency and handled in accordance with subpart B of part 1951 of this chapter. (Revised 11-12-93, SPECIAL PN.)

(d) Farm real property. Upon acceptance by the approval official, the County Supervisor or District Director will provide the closing agent with the necessary information to close the sale. (Renumbered 10-14-88, SPECIAL PN.)

(e) Organization real property. Upon acceptance of the bid or offer, the State Director will forward the original Form RD 1955-45 or RD 1955-46, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction. (Renumbered 10-14-88, SPECIAL PN.)

(f) Earnest money. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as part of the purchaser's downpayment. (Renumbered 10-14-88, SPECIAL PN.)

RD Instruction 1955-C
§1955.109 (Con.)

(g) Closing and reporting sales. Title clearance, loan closing, and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form RD 1955-49, in accordance with §1955.141 (a) of this subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form RD 1955-50A in accordance with the FMI. (Revised 06-28-95, PN 247.)

(h) Classification. Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly. (Revised 11-12-93, SPECIAL PN.)

(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. (Revised 11-12-93, SPECIAL PN.)

(j) Form RD 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts." The County Supervisor or District Director must review Form RD 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant and the form must be signed by the applicant. (Added 8-11-89, SPECIAL PN.)

§1955.110 [Reserved]

RURAL HOUSING (RH) REAL PROPERTY

§1955.111 Sale of real estate for RH purposes (housing).

Sections 1955.112 - 1955.120 of this subpart pertain to the sale of acquired property pursuant to the Housing Act of 1949, as amended, (RH property). Single family units (generally which secured loans made under Section 502 or 504 of the Housing Act of 1949, as amended) are referred to as SFH property. All other property is referred to as MFH property. Notwithstanding the provisions of §1955.112 - 1955.118 of this subpart, §1955.119 is the governing section for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for the homeless. (Revised 03-08-90, SPECIAL PN.)

§1955.112 Method of sale (housing).

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

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

(c) Sealed bid or auction. The use of sealed bids or auctions is an effective method by which to sell inventory property. If the State Director determines that NP SFH property has been given adequate market exposure and that diligent sales efforts have not produced buyers, or under unusual circumstances as outlined in §1955.115(a)(1) of this subpart, he/she will authorize sale by sealed bid or auction unless additional sales methods appear more prudent. Program SFH property will be sold by regular sale only, unless the Assistant Administrator, Housing, authorizes sale by sealed bid or auction. The State Director will request such authorization when all reasonable marketing efforts fail to produce buyers and the conditions of §1955.114(a)(6) of this subpart have been met. The case file, including documentation of all marketing efforts, will be forwarded to the Assistant Administrator, Housing, ATTN: Single Family Housing Servicing and Property Management (SFH/SPM) Division, to request authority to sell program property by sealed bid or auction. The decision to utilize a sealed bid or auction must be carefully weighed when the property is located in a subdivision, since the resultant sale may have an adverse effect on surrounding property values. Detailed guidance for conducting sealed bid sales is provided in §1955.147 of this subpart and for conducting auction sales §1955.131 and 1955.148 of this subpart. (Revised 2-15-89, PN 102)

§1955.113 Price (housing).

Real property will be offered or listed for its present market value, as adjusted by any administrative price reductions provided for in this section. Market value will be based upon the condition of the property at the time it is made available for sale. However, when a Section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very low-income residents, the price will be the lesser of the Government's investment or market value, less administrative price reductions, if any. Market value for multi-family housing projects will be determined through an appraisal conducted in accordance with Subpart B of Part 1922 of this chapter. Multi-family housing appraisals conducted shall reflect the impact of any restrictive-use provisions attached to the project as part of the credit sale. (Revised 08-20-93, SPECIAL PN.)

(a) SFH price reduction. SFH property will be appraised at any time additional marker data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. For ease in computing

§1955.113 (a) (Con.)

dates for administrative price reductions, each month is assumed to have 30 days. The following schedule of administrative price reductions will be followed:

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

second price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45 day period, the property may be sold to any offeror. If the property does not sell within 75 days of the second price reduction, further guidance is provided in §1955.114(a)(6) and Exhibit D (available in any Rural Development office) of this subpart. (Revised 2-15-89, PN 102)

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

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

§1955.114 Sales steps for program property (housing).

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

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

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

(i) Program property will be available for purchase only by program applicants for the first 45 days from the date of

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

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

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

(iv) An offer may be submitted any time after the effective date the property is available for sale or any price reduction; however, it is not considered until five business days after the effective date. An offer received during the five business day period is considered on the 6th day, at the same time as any offer received on the 6th day. (Revised 03-08-90, SPECIAL PN.)

(v) If an offer subject to Rural Development financing is accepted, and the offeror's credit request is later denied, the next offer (if any) will be accepted regardless of whether the rejected applicant appeals the adverse decision (NP applicants do not receive appeal rights). In cases involving program property,

§ 1955.114(a)(1)(v) (Con.)

if no back-up offers are on hand, the property will be reoffered/relisted for sale utilizing the balance of any outstanding retention period. Property will not be held off the market pending the outcome of an appeal.

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

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

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

(ii) Cash offers, in descending order from highest to lowest, provided the cash offer is higher than any other offer which falls into the parameters of paragraph (a)(3)(iii) of this section multiplied by the current cash preference percentage listed in Exhibit B of RD Instruction 440.1 (available in any Rural Development office). (Revised 08-20-93, SPECIAL PN.)

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

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

(4) Back-up offers and notification to offerors. Back-up offers will be taken in accordance with paragraph (a)(1)(iii) of this section. County offices utilizing the services of real estate brokers will advise the brokers of changes in the status of the property. County offices not utilizing real estate brokers will advise offerors of changes in the status of the property utilizing Exhibit E of this subpart (available in any Rural Development Office) or similar format. Use of Exhibit E is optional in offices utilizing real estate brokers.

(5) Finalizing sales. Credit sales on program terms will be made in accordance with § 1955.117 of this subpart and 7 CFR part 3550. 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. (Revised 01-23-03, SPECIAL PN.)

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

(b) Multiple-family housing. The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price, any restrictive-use provisions the project will be subject to and made part of the title, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director, or designee. The sale date/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by Rural Development will be notified in writing by the approval official, and for

§ 1955.114(b) (Con.)

program applicants, given appeal rights in accordance with Subpart B of Part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but not on the sale date. All offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other Rural Development employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as a back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer. The selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form RD 1955-40, or another appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization from the Assistant Administrator, Housing. Cash sales of program property will remain subject to restrictive-use provisions determined needed and included in the advertisement. The deed will contain the applicable restrictive-use provisions. Tenants and prospective tenants will receive the applicable protections for the specific restrictive-use provision contained in 7 CFR part 3560, Subpart N. (Revised 02-24-05, SPECIAL PN.)

(c) Single family inventory converted to MFH. Written offers by nonprofit organizations, public bodies or for profit entities, which have good records of providing low-income housing under Section 515 will be considered by Rural Development for the purchase of multiple SFH units for conversion to MFH. Section 514 credit sale mortgages may contain repayment terms up to 33 years and Section 515 credit sale mortgage terms may be up to 50 years. (Revised 07-21-93, PN 209.)

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

RD Instruction 1955-C
§ 1955.114(c) (Con.)

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

(3) Prior approval of the National Office is required before issuance of Form AD-622, "Notice of Preapplication Review Action." A preapplication with documentation as required by the Agency, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator, Housing, for a determination and further guidance. (Revised 02-24-05, SPECIAL PN.)

(4) A credit sale for this purpose will be made according to the provisions of 7 CFR part 3560, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance. (Revised 02-24-05, SPECIAL PN.)

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the requirements of 7 CFR part 3560, subpart K. (Revised 02-24-05, SPECIAL PN.)

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

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

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

§ 1955.115 (Con.)

(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 § 1951.118 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 Rural Development office) which outlines chronologically the sales steps for NP properties. (Revised 11-12-93, SPECIAL PN.)

(1) Sale by sealed bid or auction. If a NP property has not sold within 150 days after being offered for sale, the inventory case file with documentation of marketing efforts will be submitted to the State Director. The State Director will authorize sale by sealed bid or auction in accordance with § 1955.112(c) of this subpart unless additional sales methods appear more prudent. Use of the sealed bid or auction method may be considered as an initial sales effort under special or unusual circumstances such as, but not limited to, structures which have been substantially destroyed by fire or other causes.

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

(3) Sale of vacant land. When Rural Development has vacant land in inventory which was security for an SFH loan, the land will be sold in accordance with this subparagraph. When the lot meets the requirements of 7 CFR part 3550, and a program applicant desires to purchase the lot and construct a dwelling, a credit sale will not be made. Instead, one Section 502 loan will be made which will include funds for the purchase of the lot and construction of a dwelling. Otherwise, the lot will be sold for cash or on NP terms with a loan not to exceed ten years in term and amortization. (Revised 01-23-03, SPECIAL PN.)

(b) Multiple family housing. Sales steps will be the same as for program MFH property as provided in § 1955.114(b) of this subpart except that sales must be for cash or on NP terms as set forth in

§ 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell NP MFH property, authority to use that method of sale must be requested from the Assistant Administrator, Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review. If the housing is sold out of the Rural Development program as NP property, the closing of the sale may not take place until tenants have received all notifications and benefits afforded to tenants in prepaying projects in accordance with 7 CFR part 3560, Subpart N. (Revised 02-24-05, SPECIAL PN.)

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

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

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

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

*For advertisements, the sentence preceding the asterisk may be deleted and replaced with the following, or similar sentence:
"Contact Rural Development (or any real estate broker/name of exclusive broker) for a list of items which must be

repaired/renovated." For notices other than advertising, insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

- Replace flooring and floor joists in kitchen and bathroom.
- Drill new well to provide for an adequate and potable water supply.
- Hook-up to community water and sewage system now being installed.
- Provide a functionally adequate, safe and operable *___ system. *Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.
- Install *. *Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.
- Install R-*__insulation in basement walls or ceiling, R-*__insulation in attic, and storm windows/doors throughout. *Insert appropriate R-Values to meet Thermal Performance Standards.

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

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

"Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this

paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to the Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated as follows: *__. " *Insert the same items referenced in the listing notice(s) and sale agreement which are necessary to make the dwelling unit(s) meet DSS standards.

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

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

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

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

(b) Processing. The Rural Development regulations pertaining to the type of credit being extended will be followed in making credit sales on program terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security, less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 3 percent of the purchase price as a cash downpayment. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and restrictive-use provisions specified by the respective program requirements. (Revised 08-20-93, SPECIAL PN.)

§ 1955.117 (Con.)

(c) Approval. Forms RD 1940-1 or RD 3560-51, as appropriate, will be used to approve a credit sale even though no obligation of funds is required. (Revised 02-24-05, SPECIAL PN.)

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

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

(f) Closing costs. MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling. Any closing costs which are legally or customarily paid by the seller will be paid by Rural Development and charged to the inventory account as a nonrecoverable cost item. (Revised 2-15-89, PN 102.)

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

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

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

RD Instruction 1955-C
§ 1955.117(g) (Con.)

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

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

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.
(Revised 11-12-93, SPECIAL PN.)

(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. (Revised 11-12-93, SPECIAL PN.)

§ 1955.118 (Con.)

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

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

(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. (Revised 11-12-93, SPECIAL PN.)

(3) Approval. Form RD 3560-51, 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. (Revised 02-24-05, SPECIAL PN.)

(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 Subparts B and K of Part 1951 of this chapter. (Revised 11-12-93, SPECIAL PN.)

(5) Interest rate. The Section 515 RRH interest rate plus 1/2 percent will be charged on all types of housing credit sales, except SFH. Refer to Exhibit B of RD Instruction 440.1 (available in any Rural Development 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. (Revised 11-12-93, SPECIAL PN.)

(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.
(Revised 11-12-93, SPECIAL PN.)

(7) Modification of security instruments. If applicable to the type property being sold, modification of security instruments may be made. On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, restrictive-use provisions on MFH projects, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted. Special care should be taken to ensure that only the aforementioned covenants are deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and Rural Development initialing the changes.
(Revised 08-20-93, SPECIAL PN.)

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

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

§1955.118 (b)(8) (Con.)

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

(iii) The County Supervisor or District Director will provide the closing agent with necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales. (Revised 11-12-93, SPECIAL PN.)

(iv) When more than one property is bought by the same buyer and the transactions are closed at the same time, a separate promissory note will be prepared for each property, but one mortgage will cover all the properties.

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

(10) Classification. MFH credit sales on NP terms will be classified as NP loans and serviced accordingly. (Revised 11-12-93, SPECIAL PN.)

(11) Form RD 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts." The County Supervisor or District Director must review Form RD 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant.

§1955.119 Sale of SFH inventory property to a public body or nonprofit organization. (Added 03-08-90, SPECIAL PN.)

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. (Revised 11-12-93, SPECIAL PN.)

(a) Method of Sale. The method of sale is according to {1955.112 of this subpart. Upon request from a public body or nonprofit organization, Rural Development will provide a list of all SFH inventory property, regardless of whether it is listed for sale with real estate brokers. The list will indicate whether the property is program or nonprogram.

RD Instruction 1955-C
§1955.119 (a) (Con.)

Upon written notice of the organization's intent to buy a specific property, if it is not under a sale contract, Rural Development will withdraw the property from the market for a period not to exceed 30 days to provide the organization sufficient time to execute Form RD 1955-45.

(b) Price. The price of the property will be established according to §1955.113 of this subpart; however, a 10 percent discount of the listed price is authorized on nonprogram property. No discount is authorized on program property.

(c) Decent, safe and sanitary (DSS) standards. If an organization wants to buy a property which does not meet DSS standards, Rural Development will repair it to meet those standards, including thermal performance standards, unless Rural Development determines it is not feasible to do so according to §1955.64 (a)(1)(ii) of Subpart B of Part 1955 of this chapter. The price will be adjusted to reflect any resulting change in value. Cosmetic repairs, if needed, such as painting, floor covering, landscaping, etc., are the responsibility of the organization. Form RD 1955-44, itemizing the required repairs and Rural Development's agreement to complete them before closing will be made a part of Form RD 1955-45, the sales contract, before it is signed. Required repairs must be completed before closing so DSS restrictions will not be required in the deed.

(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: (Revised 11-12-93, SPECIAL PN.)

- (1) Earnest money deposit. No earnest money deposit is required.
- (2) Downpayment. No downpayment is required.
- (3) Term of note. The term of the note may not exceed 30 years.

§1955.120 Payment of points (housing).

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a non-Rural Development loan, the County Supervisor may authorize the payment by Rural Development of not more than three points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form RD 1955-45 and will be fixed as of the date the form is signed by the appropriate Rural Development official. Points will not be paid to reduce the purchaser's interest rate. The payment will be deducted from the funds to be received by Rural Development at closing. These payments will be handled in accordance with Subpart B of Part 1951 of this chapter. (Revised 11-12-93, SPECIAL PN.)

CHATTEL PROPERTY

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122 - 1955.124 of this subpart prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid, regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified Agency employee.

§ 1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the methods considered most appropriate. If the chattel is not sold within 180 days after acquisition, assistance will be requested as outlined in § 1955.143 of this subpart.

(a) Sale to beginning farmers or ranchers. Beginning farmers or ranchers obtaining special OL loan assistance under § 1941.15 of Subpart A of Part 1941 of this chapter will receive priority in the purchase of farm equipment held in government inventory during the commitment period. The county official will notify such applicants/borrowers of any farm equipment held in government inventory within the service area of the FSA County Office. These applicants/borrowers will be given 10 working days to respond that they are interested in purchasing any or all items of equipment at the appraised fair market value established by FSA. RD Form Letter 1955-C-1 will be used to notify applicants/borrowers of the availability of farm equipment in FSA inventory. The equipment must be essential to the success of the operation described in the loan application in order for the applicant to have an opportunity to purchase such equipment. The county official will determine what equipment is essential. (Revised 08-20-97, PN 280.)

(b) Regular sale. Chattels will be sold by FSA employees at market value to program applicants. Form RD 440-21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale. (Renumbered 08-20-97, PN 280.)

(c) Auctions. Section 1955.148 of this subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section. (Renumbered 08-20-97, PN 280.)

(1) Established public auction. An established public auction is an auction that is widely advertised and held on a regularly scheduled basis at the same facility. This method of sale is

particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) Other auctions. Other auctions, whether conducted by FSA employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels, and for the sale of chattels in conjunction with the auction of real property. A minimum of 5 days public notice will be given prior to the date of auction.

(d) Sealed bid sales. Section 1955.147 of this subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale, this method has advantages over auction sales. It requires, however, additional steps in the event any established minimum price is not obtained. Preference will be given to a cash offer which is at least ____* percent of the highest offer requiring credit. [*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.] (Renumbered 08-20-97, PN 280.)

(e) Negotiated sale. Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least ____* percent of the highest offer requiring credit. [*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.] No public notice is required to negotiate with interested parties, including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form RD 1955-47, "Bill of Sale "A" - Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to RD Instruction 1951-B (available in any Agency office). A State Supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws. (Renumbered 08-20-97, PN 280.)

(f) Notification. In many states the original owner of the chattel property must personally be notified of the sale date and method of sale within a certain time prior to the sale. The State Director will issue a State Supplement clearly stating what notices are to be sent, if any. The County Supervisor will review State Supplements to determine what notices must be sent to the previous owner of the chattel property prior to the Agency taking action to sell the property. (Renumbered 08-20-97, PN 280.)

§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 RD Instruction 440.1 (available in any Rural Development 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 Rural Development 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 RD Instruction 440.1 (available in any Rural Development 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 Rural Development office). For other than C&BP, credit sales to NP purchasers will be handled in accordance with Subpart J of Part 1951 of this chapter. (Revised 11-12-93, SPECIAL PN.)

(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 Rural Development. 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 the sale, the offer will be documented by Form RD 1955-45 or RD 1955-46 where the chattel is sold jointly with real estate by regular sale. (Revised 11-12-93, SPECIAL PN.)

(c) Transfer of title. Title will be transferred to a purchaser in accordance with {1955.141 (b) of this subpart.

(d) Reporting sale. Sale will be reported in accordance with {1955.142 of this subpart.

(e) Reporting and disposal of inventory property not sold. Refer to §1955.143 and 1955.144 of this subpart for additional guidance in disposing of problem property.

§1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory accounts based on the value of the property sold. Form RD 440-21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale on Form RD 1955-45 or Form RD 1955-46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§1955.125 - 1955.126 [Reserved]

USE OF CONTRACTORS TO DISPOSE OF INVENTORY PROPERTY

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

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

§1955.128 Appraisers (Revised 11-03-93, SPECIAL PN.)

(a) Real property. The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the Assistant Administrator, Housing, when unusual circumstances preclude the use of a qualified Rural Development MFH appraiser.) The decision will be based on the availability of comparables, the capability and availability of personnel, and the number and type of properties (such as large farms and business property) requiring valuation. For Farmer Programs real estate properties, all contract (fee) appraisers should include the sales comparison, income (when applicable), and the cost approach to value. All Rural Development real estate contract appraisers must be certified as State-Certified General Appraisers.

(b) Chattel property. For Farmer Programs chattel appraisals, the chattel contractor/appraiser completing the report must meet at least one of the following qualifications:

§1955.128 (b) (Con.)

- (1) Certification by a National or State appraisal society.
- (2) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for a certification in a National or State appraisal society.
- (3) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

§1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

- (a) The primary use of the structure included in the sale is other than residential;
- (b) The business broker is duly licensed by the respective state; and

§ 1955.129 (Con.)

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

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

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

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

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

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

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

- (1) Program SFH. See § 1955.114(a) of this subpart.
- (2) Program MFH. Offers will be considered from program applicants only.
- (3) NP SFH. See § 1955.115(a) of this subpart.
- (4) NP MFH. See § 1955.115(b) of this subpart.
- (5) Suitable and Surplus CONACT. See § 1955.107 of this subpart.
- (6) Suitable, Surplus non-FSA CONACT. See § 1955.108 of this subpart.

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

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

- (1) Amount. The amount of earnest money collected will be:
 - (i) For single family properties or MFH projects of 2 to 5 units, \$50.
 - (ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the greater of the estimated closing

costs shown on the notice of listing (Form RD 1955-40) or 1/2 of 1 percent of the purchase price.

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

(f) Commission.

(1) Amount.

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

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

(2) Special effort sales bonuses. The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property. The State Director may authorize use of short-term (not to exceed three months) special effort sales bonuses on a group, county, district or state-wide basis, if it appears necessary to facilitate the sale of nonprogram property. (Revised 03-08-90, SPECIAL PN.)

(3) Payment of commission. Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's

salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving Rural Development credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving Rural Development credit, one-half the respective commission will be paid to the exclusive broker. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate Rural Development official by completing Form AD-838 and processing Form RD 838-B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

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

§1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in §1955.148 of this subpart and procured by competitive negotiation under the contracting authority of RD Instruction 2024-A (available in any Rural Development office).

(a) Selection criteria. The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualification, financial capability, private sector financing and license/bonding.

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

(c) Auctioneer restriction. The auctioneer, his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

GENERAL

§1955.132 Pilot projects.

Rural Development may conduct pilot projects to test policies and procedures for the management and disposition of inventory property which deviate from the provisions of this subpart, but are not inconsistent with the provisions of the authorizing statute or other applicable Acts. A pilot project may be conducted by Rural Development employees or by contract with individuals, organizations or other entities. Prior to initiation of a pilot project, Rural Development will publish notice in the Federal Register of its nature, scope, and duration. (Added 03-08-90, SPECIAL PN.)

§1955.133 Nondiscrimination.

(a) Title VI provisions. If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if Rural Development extends credit and the property then becomes subject to Title VI, the buyer will sign Form RD 400-4, "Assurance Agreement." The instrument of conveyance will contain the following statement:

"The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended."

(b) Affirmative Fair Housing Marketing Plan. Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed offered for sale at the same time will prepare and submit to Rural Development an acceptable Form HUD 932.5, "Affirmative Fair Housing Marketing Plan," for each such subdivision in accordance with § 1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) Equal Housing Opportunity logo. All Rural Development and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) Property under contract. If a bid or offer has been accepted by the Rural Development and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by Rural Development, Rural Development will reappraise the property. The reappraised value of the property will serve as the amount Rural Development will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by Rural Development is less than \$500, payment of the full purchase price is required. In the event two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

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

§ 1955.135 Taxes on inventory real property. (Revised 03-25-91, SPECIAL PN.)

Where Rural Development owned property is subject to taxation, taxes and assessment installments will be prorated between Rural Development and the purchaser as of the date the title is conveyed in accordance with the conditions of Forms RD 1955-45 or RD 1955-46. The purchaser will be responsible for paying all taxes and assessment installments accruing after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only the prorata share of assessment installments for property improvements (water, sewer, curb and gutter, etc.) accrued as of the date property is sold will be paid by Rural Development for inventory property. At the closing, payment of taxes and assessment installments due to be paid by Rural Development will be paid from cash proceeds Rural Development is to receive as a result of the sale or by voucher and will be accomplished by one of the following:

(a) For purchasers receiving Rural Development credit and required to escrow, Rural Development's share of accrued taxes and assessment installments will be deposited in the purchaser's escrow account.

RD Instruction 1955-C
§ 1955.135 (a)(Con.)

(b) For purchasers not required to escrow, accrued taxes and assessment installments may be:

(i) Paid to the local taxing authority if they will accept payment at that time; or

(ii) Paid to the purchaser. If appropriate, for program purchasers, the funds can be deposited in a supervised bank account until the taxes can be paid.

(c) Except for SFH, deducted from the sale price (which may result in a promissory note less than the sale price), if acceptable to the purchaser.

§ 1955.136 Environmental review requirements.

(a) Prior to a final decision on some disposal actions, the action must comply with the environmental review requirements in accordance with each agency's environmental policies and procedures found in 7 CFR part 1970. (09-19-18, PN 516).

§ 1955.136(a) (Con.)

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The Agency approval official has reason to believe the conveyance would result in a change in the use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500-3, "Land Use Policy," in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

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

(a) Real property located in flood, mudslide hazard, wetland, or Coastal Barrier Resources System (CBRS). (Revised 08-20-97, PN 280.)

(1) Use restrictions. Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property containing floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law, as determined by the Agency official responsible for the conveyance. Applicable restrictions will be incorporated into quitclaim deeds in a format similar to that contained in Exhibits H and I of this subpart with the advice and approval of OGC. A listing of all restrictions will be included in the notices required in paragraph (a)(2) of this section. (Revised 08-20-97, PN 280.)

(2) Notice of hazards. Acquired real property located in an identified special flood or mudslide hazard area as defined in Subpart B of part 1806 of this chapter (RD Instruction 426.2) will not be sold for residential purposes unless determined by the County official or District Director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants). Prior written notice of the specific hazard must be given to prospective purchasers. The notice will be prepared in accordance with the following:

(i) Inventory property offered for sale. The county official or District Director will inform prospective purchasers at the time of the first inquiry and in any notice of public sale that the property is located in a special flood, mudslide hazard or wetland area and specify any use restrictions resulting from this location. The county official or District Director will also prepare and deliver a written notice to the prospective purchaser at the time the bid or offer to purchase is signed by the purchaser. The prospective purchaser will acknowledge the receipt of the notice. Exhibit A of this subpart may be used as a guide for preparing the notice and the acknowledgment. The acknowledgment will be placed in the inventory property file. (Revised 08-20-97, PN 280.)

(ii) Property offered for sale through real estate brokers or auctioneers. If real estate brokers or auctioneers are engaged to sell inventory property, they must notify prospective purchasers in writing that the property is located in a special flood, mudslide hazard, or wetland area and specify any use restrictions resulting from this location.

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

(B) After the prospective purchaser signs the acknowledgement, the broker or auctioneer will forward it to the county official or District Director, as appropriate, with Form RD 1955-45 or Form RD 1955-46.

(3) Limitations placed on financial assistance.

(i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must

§ 1955.137(a)(3)(i) (Con.)

be provided at closing of loans on program-eligible and non-program (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in 7 CFR part 1970 for Rural Development programs. (Revised 09-19-18, PN 516.)

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, no credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan or any other type of federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purpose of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA.

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (a)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (a)(3)(ii) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) Wetlands located on FSA inventory property. Perpetual wetland conservation easements (encumbrances in deeds) to protect and restore wetlands that exist on suitable or surplus inventory property will be established prior to sale of such property. The provisions of paragraphs (a)(2) and (3) also apply, as does paragraph (a)(1) insofar as floodplains are concerned. This requirement applies to either cash or credit sales. Similar restrictions will be included in leases of inventory properties to beginning farmers or ranchers. Wetland conservation easements will be established as follows:
(Revised 08-20-97, PN 280.)

(1) All wetlands or converted wetlands located on FSA inventory property which were not considered cropland on the date the property was acquired and were not used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will receive a wetland conservation easement.

(2) All wetlands or converted wetlands located on FSA inventory property that were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will not receive a wetland conservation easement.

(3) The following steps should be taken in determining if conservation easements are necessary for the protection of wetlands or converted wetlands on inventory property:

(i) NRCS will be contacted first to identify the wetlands or converted wetlands and wetland boundaries of each wetland or converted wetland on inventory property. NRCS should be requested to not identify prior converted and frequently cropped wetlands.

§ 1955.137(b)(3) (Con.)

(ii) After receiving the wetland determination from NRCS, FSA will review the determination for each inventory property and determine if any of the wetlands or converted wetlands identified by NRCS were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired. Property will be considered to have been used for farming if it was used for agricultural purposes including but not limited to such uses as cropland, pasture, hayland, orchards, vineyards and tree farming. (Revised 09-10-03, PN 363.)

(iii) After FSA has completed the determination of whether the wetlands or converted wetlands located on an inventory property were used for cropland or farming, the U.S. Fish and Wildlife Service (FWS) will be contacted. Based on the technical considerations of the potential functions and values of the wetlands on the property, FWS will identify those wetlands or converted wetlands as determined that require protection with a wetland conservation easement along with the boundaries of the required wetland conservation easement. FWS may also make other recommendations if needed for the protection of important resources such as threatened or endangered species during this review. (Revised 09-10-03, PN 363.)

(4) The wetland conservation easement will provide for access to other portions of the property as necessary for farming and other uses.

(5) The appraisal of the property must be updated to reflect the value of the land due to the conservation easement on the property.

(6) Easement areas shall be described in accordance with State or local law. If State or local law does not require a survey, the easement area can be described by rectangular survey, plat map, or other recordable methods.

(7) In most cases the FWS shall be responsible for easement management and administration responsibilities for such areas unless the wetland easement area is an inholding in Federal or State property and that entity agrees to assume such responsibility, or a State fish and wildlife agency having counterpart responsibilities to the FWS is willing to assume easement management and administration responsibilities. The costs associated with such easement management responsibilities shall be the responsibility of the agency that assumes easement management and administration.

(8) County officials are encouraged to begin the easement process before the property is taken into inventory, if possible, in order to have the program completed before the statutory time requirement for sale.

(c) Historic preservation. (Renumbered 08-20-97, PN 280.)

(1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the Agency official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See Subpart F of part 1901 for additional guidance.) To determine the former, the current listing of the Register is reviewed. To determine the latter, the State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria are met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historic or archaeological importance or has apparent significant architectural features or is similar to other Agency properties that have been determined to be eligible. (Revised 08-20-97, PN 280.)

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) When consultation is not required based upon the above criteria, the responsible Agency official shall note in the inventory file the basic reason why no consultation was necessary. For example, the running record may indicate the property to be conveyed may be a standard, 10-year old, single family house, a check may have been made with a local historical society on a less obvious property may have been previously cleared.

(3) If the result of the consultations with the SHPO is that a property may be eligible or that it is questionable, an official determination must be obtained from the Secretary of the Interior. The State Office should be contacted for assistance in obtaining this determination. The National Office Program Support Staff is also available to assist the State Office.

§ 1955.137(c) (Con.)

(4) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the Agency official responsible for the conveyance must consult with the SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interest. The Advisory Council on Historic Preservation must be consulted by the State Director or State Executive Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(5) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to potential bidder or purchasers through a notice procedure similar to that in § 1955.137(a)(2) of this subpart.

(d) Highly erodible farmland. (Renumbered 08-20-97, PN 280.)

(1) The FSA County official will determine if any inventory property contains highly erodible land as defined by the NRCS and, if so, what specific conservation practices will be made a condition of a sale of the property. This should be done by reviewing the conservation plan prepared for the inventory property. See § 1955.64(a)(3) of Subpart B of this part. If this review determines that sufficient information does not exist on the locations of highly erodible land or recommended conservation practices, the NRCS shall be contacted and requested to provide the necessary information. (Revised 08-20-97, PN 280.)

(2) If the County official does not concur in the need for a conservation practices recommended by NRCS, any differences shall be discussed with the recommending NRCS office. Failure to reach an agreement at that level shall require that State Executive Director to make a final decision after consultation with the NRCS State Conservationist. (Revised 08-20-97, PN 280.)

(3) Whenever NRCS technical assistance is requested in implementing these requirements and NRCS responds that it cannot provide such assistance within a timeframe compatible with the proposed sale, the County official will determine if the sale arrangements should go forward or be delayed. If the property either is known to contain highly erodible land or there is visible evidence of erosion problems, a sale of the property will be delayed until NRCS can respond. Otherwise, the sale may proceed, conditioned on the

requirement that a purchaser will immediately contact NRCS and have a conservation plan developed. The County official will monitor the borrower's compliance with the recommendations in the conservation plan. If problems occur in obtaining NRCS assistance, the State Executive Director should consult with the NRCS State Conservationist. The potential for response to problems arising can be diminished by ensuring that all farmland in inventory has a conservation plan developed in accordance with § 1955.64(a)(3) of Subpart B of this part and that NRCS assistance is requested immediately after acquiring title. (Revised 08-20-97, PN 280.)

(4) The steps taken and results achieved in order to comply with the provisions of this paragraph shall be documented in the environmental review conducted for the proposed sale. All prospective purchasers must be made aware at the time of first inquiry of the conservation practices to be required. Therefore, the environmental review must be completed as soon as possible after acquiring title to the property.

(e) Notification to purchasers of inventory property with reportable underground storage tanks. If the Agency is selling inventory property containing a storage tanks which was reported to the Environmental Protection Agency (EPA) pursuant to the provisions of § 1955.57 of Subpart B of part 1955, the potential purchasers will be informed of the reporting requirement and provided a copy of the report filed by the Agency. (Renumbered 08-20-97, PN 280.)

(f) Real property that is unsafe. If the Agency has in inventory, real property, exclusive of any improvements, that is unsafe, that is it does not meet the definition of "safe" as contained in § 1955.103 of this Subpart and which cannot be feasibly made safe, the State Director or State Executive Director will submit the case file, together with documentation of the hazard and a recommended course of action to the National Office, ATTN: appropriate Deputy Administrator, for review and guidance. (Renumbered 08-20-97, PN 280.)

(g) Real property containing hazardous waste contamination. All inventory property must be inspected for hazardous waste contamination either through the use of a preliminary hazardous waste site survey or Transaction Screen Questionnaire. If possible contamination is noted, a Phase I or II environmental assessment will be completed per the advice of the State Environmental Coordinator. (Added 08-20-97, PN 280.)

§ 1955.138 Property subject to redemption rights.

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

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

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provisions of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State Supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

§ 1955.139 Disposition of real property rights and title to real property.
(Revised 10-14-88, SPECIAL PN.)

(a) Easements, rights-of-way, development rights, restrictions or the equivalent thereof. The State Director is authorized to convey these rights for conservation purposes, roads, utilities, and other purposes as follows:

(1) Except as provided in paragraph (a)(3) of this section, easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

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

(3) For FSA properties only, easements, restrictions, development rights or similar legal rights may be granted or sold separately from the underlying fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a State, a political subdivision of a State, or a private nonprofit organization. Easements may be granted or sold to a Federal agency for conservation purposes as long as the requirements of § 1955.139(c)(2) of this Subpart are followed. If FSA has an affirmative responsibility such as protecting an endangered species as provided for in paragraph (a)(3)(v) of this section, the requirements in § 1955.139(c)(2) of this Subpart do not apply. (Revised 08-20-97, PN 280.)

(i) Conservation purposes include but are not limited to protecting or conserving the following environmental resources or land uses:

(A) Fish and wildlife habitats of local, regional State, or Federal importance, (Revised 10-14-88, SPECIAL PN.)

(B) Floodplain and wetland areas as defined in Executive Orders 11988 and 11990, (Revised 10-14-88, SPECIAL PN.)

(C) Highly erodible land as defined by NRCS,

(D) Important farmland, prime forest land, or prime rangeland as defined in Departmental Regulation 9500-3, "Land Use Policy."

(E) Aquifer recharge areas of local, regional or state importance,

(F) Areas of high water quality or scenic value, and

(G) Historic and cultural properties.

(ii) Development rights may be sold for conservation purposes for their market value to a unit of local or State governmental or a private nonprofit organization by negotiation.

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local, State, Federal government or a private nonprofit organization for conservation purposes. If such a conveyance will adversely affect the Agency's financial interest, the State Director will submit the proposal to the Administrator for approval unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.
(Revised 10-14-88, SPECIAL PN.)

§ 1955.139(a)(3) (Con.)

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not change program/suitable property to NP or surplus. Sales proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter. Conveyances shall include terms and conditions which clearly specify the property interest(s) being conveyed as well as all appropriate restrictions and allowable uses. The conveyances shall also require the owner of such interests to permit the appropriate Agency, and any person or government entity designated by the appropriate Agency, to have access to the affected property for the purpose of monitoring compliance with terms and conditions of the conveyance. To the maximum extent possible, the conveyance should designate an organization or government entity for monitoring purposes. In developing the conveyance, the approval official shall consult with any State or Federal Agency having special expertise regarding the environmental resource(s) or land uses to be protected.

(v) For FP cases except when Rural Development has an affirmative responsibility to place a conservation easement upon a farm property, easements under the authority of this paragraph will not be established unless either the rights of all prior owner(s) have been met or the prior owner(s) consents to the easement. Examples of instances where an affirmative responsibility exists to place an easement on a farm property to include wetland and floodplain conservation easements required by § 1955.137 of this subpart or easements designated as environmental mitigation measures for the purpose of protecting federally designated important environmental resources. These resources include: listed or proposed endangered or threatened species, listed or proposed critical habitats, designated or proposed wilderness areas, designated or proposed wild or scenic rivers, historic or archaeological sites listed or eligible for listing on the National Register of Historic Places, coastal barriers included in Coastal Barrier Resource Systems, natural landmarks listed on National Registry of Natural Landmarks, and sole source aquifer recharge as designated by the Environmental Protection Agency. (Revised 09-19-18, PN 516.)

(vi) For FSA cases whenever a request is made for an easement under the authority of this paragraph and such request overlaps an area upon which FSA has an affirmative responsibility to place an easement, that required portion of the easement either in terms of geographical extent or content, will not be considered to adversely impact the value of the farm property. (Revised 08-20-97, PN 280.)

(4) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) Mineral and water rights, mineral lease interests, air rights, and agricultural or other leases.

(1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests will be sold with the surface land and will not be sold separately, except as provided in paragraph (a) of this section and in § 1955.66(a)(2)(iii) of Subpart B of part 1955. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessee or payor of the assignment. A copy of this notice will be furnished to the purchaser.

(3) The value of such rights, interests or lessees will be considered when the property is appraised.

(c) Transfer of FSA inventory property for conservation purposes.
(Revised 08-20-97, PN 280.)

(1) In accordance with the provisions of this paragraph, FSA may transfer, to a Federal or State agency for conservation purposes (as defined in paragraph (a)(3)(i) of this section), inventory property, or an interest therein, meeting any one of the following three criteria and subject only to the homestead protection rights of all previous owners having been met.

§ 1955.139(c)(1) (Con.)

(i) A predominance of the land being transferred has marginal value for agricultural production. This is land that NRCS has determined to be either highly erodible or generally not used for cultivation, such as soils in classes IV, V, VII or VIII of NRCS's Land Capability Classification, or

(ii) A predominance of land being environmentally sensitive. This is land that meets any of the following criteria:

(A) Wetlands, as defined in Executive Order 11990 and USDA Regulation 9500-3.

(B) Riparian zones and floodplains as they pertain to Executive Order 11988.

(C) Coastal barriers and zones as they pertain to the Coastal Barrier Resources Act or Coastal Zone Management Act.

(D) Areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat for recovery pertaining to the Endangered Species Act.

(E) Fish and wildlife habitats of local, regional, State or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility (Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharge areas of local, regional, State or Federal importance.

(G) Areas of high water quality or scenic value.

(H) Areas containing historic or cultural property; or

(iii) A predominance of land with special management importance. This is land that meets the following criteria:

(A) Lands that are in holdings, lie adjacent to, or occur in proximity to, Federally or State-owned lands.

(B) Lands that would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

(C) Lands that would provide a necessary buffer to development if such development would adversely affect the existing Federally or State-owned lands.

(D) Lands that would contribute to boundary identification and control of existing conservation lands.

(2) When a Federal or state agency requests title to inventory property, the State Director will make a preliminary determination as to whether the property can be transferred.

(3) If a decision is made by the State Executive Director to deny a transfer request by a Federal or state agency, the requesting agency will be informed of the decision in writing and informed that they may request a review of the decision by the FSA Administrator.

(4) When a State or Federal agency requests title to inventory property and the State Executive Director determines that the property is suited for transfer, the following actions must be taken prior to approval of the transfer:

(i) At least 2 public notices must be provided. These notices should be published in a newspaper with a wide circulation in the area in which the requested property is located. The notice should provide information on the proposed use of the property by the requesting agency and request any comments concerning the negative or positive aspects of the request. A 30-day deadline should be established for the receipt of comments.

(ii) If requested, at least one public meeting must be held to discuss the request. A representative of the requesting agency should be present at the meeting in order to answer questions concerning the proposed conservation use of the property. The date and time for a public meeting should be advertised.

(iii) Written notice must be provided to the Governor of the state in which the property is located as well as at least one elected official of the county in which the property is located. The notification should provide information on the request and solicit any comments regarding the proposed transfer.

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(5) If the State Executive Director decides to submit the request to the Administrator for approval, unless the State Executive Director has been delegated approval authority in writing from the Administrator to approve such transactions based on demonstrated capability and experience in processing such transfers, the following information regarding the request must be provided:

(i) Certification that the homestead protection rights as outlined in Subpart S of part 1951 of this chapter, have expired.

(ii) Determination that the land is suitable or surplus and the rationale for that determination.

(iii) A statement of the factual basis for determining the land to be of marginal value for agricultural production, environmentally sensitive, or having special management importance, with particular discussion of any national benefits to be achieved (migratory bird and wetland conservation).

(iv) Identification of the requesting agency and the recommended conservation use if a transfer of inventory land were to occur.

(v) Views of the U.S. Fish and Wildlife Service relative to the need for wetland and floodplain deed restrictions as required by § 1955.137 (a) of this Subpart. These deed restrictions must be in effect at the time of transfer of inventory lands to any non-Federal entity. Transfer to another Federal entity will only be considered where proper wetland and floodplain conservation precautions have been agreed to by the Federal entity.

(vi) An estimated value of the property to be transferred.

(vii) A completed copy of a preliminary hazardous waste site survey or Transaction Screen Questionnaire.

(6) Determining priorities for transfer or inventory lands.

(i) A Federal entity will be selected over a State entity since the transfer of inventory land involves Federally owned or administered land.

(ii) If two Federal agencies request the same land tract, priority will be given to the Federal agency that owns or controls property adjacent to the property in question or if this is not the case, to the Federal agency whose mission or expertise best matches the conservation purposes for which the transfer would be established.

(iii) In selecting between State agencies, priority will be given to the State agency that owns or controls property adjacent to the property in question or if that is not the case, to the State agency whose mission or expertise best matches the conservation purposes for which the transfer would be established.

(7) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to habitat of National importance (e.g., wetlands as addressed in the Emergency Wetlands Resources Act), priority consideration will be given to land transfer for conservation purposes, without reimbursement, over other land disposal alternatives.

(8) An individual property may be subdivided into parcels and a parcel can be transferred under the requirements of this paragraph as long as the remaining parcels to be sold make up a viable sales unit, suitable or surplus.

§ 1955.140 Sale in parcels. (Revised 10-14-88, SPECIAL PN.)

(a) Individual property subdivided. An individual property, other than Farm Loan Programs property, may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the county official will subdivide the property into one or more tracts to be sold in accordance with § 1955.107. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental review requirements must comply with 7 CFR part 1970.

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Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. Subdivision of acquired property will be reported on Form RD 1955-3C, "Acquired Property-Subdivision," in accordance with the FMI. (Revised 09-19-18, PN 516.)

(b) Grouping of individual properties. The County Supervisor for FP cases, and the State Director for all other cases, may authorize the combining of two or more individual properties into a single parcel for sale as a suitable program property.

§ 1955.141 Transferring title.

(a) Real property. Real property will be conveyed by Form RD 1955-49, or other form of nonwarranty deed approved by OGC, executed by the State Director or duly designated Acting State Director. This authority may not be redelegated except in Puerto Rico, where the State Director may delegate this authority to a District Director. A District Director in Puerto Rico may not redelegate this authority except to a duly designated Acting District Director. The Agency or an approved closing agent may prepare the granting instrument for real property. Any Agency expenses involved will be paid in accordance with RD Instruction 2024-A). (Revised 08-13-92, SPECIAL PN.)

(b) Chattel. Chattel property will be conveyed by Form RD 1955-47, executed by the County Supervisor, District Director, or State Director.

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

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- (1) A termite certificate from a reliable firm.
- (2) Local authority certification, if customary in the State, that the individual water and/or sewage systems are functional and adequate for property not being served by public water and/or sewer systems.

(d) Rent increases for MFH property. After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase, may be needed to continue or place project operations on a sound basis. 7 CFR part 3560, subpart E will be followed in processing the request for a rent increase. In processing the rent increase, the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing. (Revised 02-24-05, SPECIAL PN.)

(e) Interest credit and rental assistance for MFH property. Interest credit and rental assistance may be granted to program applicants purchasing MFH properties in accordance with the provisions of 7 CFR part 3560, Subpart F. (Revised 02-24-05, SPECIAL PN.)

§ 1955.142 Reporting sale.

When the transaction is closed and the conveying instrument has been delivered, the appropriate Agency official will process Form RD 1955-50A, Form RD 1955-50B, "Advice of Inventory Property Sold - Cash Sale/Transfer - Acquired Property," or for MFH, Form RD 3560-19, "Status of REO Property," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner. (Revised 02-24-05, SPECIAL PN.)

§ 1955.143 Report of inventory not sold.

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

- (a) SFH properties. (Revised 2-15-89, PN 102.)

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§ 1955.143(a) (Con.)

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

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

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

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

(a) Property which cannot be sold. If NP or surplus real or chattel property cannot be sold (or only token offers are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, "Report of Excess Personal Property," with transfer documented by Standard Form 122, "Transfer Order Excess Personal Property." Real property will be reported to GSA using Standard Form 118, "Report of Excess Real Property," Standard Form 118A, "Buildings, Structures, Utilities and Miscellaneous Facilities (Schedule A)," Standard Form 118B, "Land (Schedule B)" and Standard Form 118C, "Related Personal Property (Schedule C)," with final disposition documented by a "Receiving Report," executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions will be obtained from the appropriate GSA Regional Office by the State Office. (Revised 06-28-95, PN 247.)

(b) Urban Homesteading Program (UH). Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired Rural Development single family residential properties sold through the HUD-UH Program. Local governmental units may make application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator for Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the "Memorandum of Agreement between the Farmers Home Administration and the Secretary of Housing and Urban Development" dated October 2, 1981. (See Exhibit C of this subpart.) A Local Urban Homesteading Agency (LUHA) is authorized a 10 percent discount of the listed price on any SFH nonprogram property for the UH Program. No discount is authorized on program property. (Revised 03-08-90, SPECIAL PN.)

§1955.145 Land acquisition to effect sale.

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

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

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

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

§1955.146 Advertising.

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

(b) Large-value and complex properties. Advertising for MFH, B&I and other large-value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) MFH restrictive-use provisions. Advertisements for multi-family housing projects will advise prospective purchasers of any restrictive-use requirements that will be attached to the project and added to the title of the property. (Added 08-20-93, SPECIAL PN.)

(d) Racial and socio-economic considerations. In accordance with the policies set forth in {1901.203(c) of Subpart E of Part 1901 of this chapter, the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of existing racial or socio-economic patterns are reached. (Renumbered 08-20-93, SPECIAL PN.)

(e) Rejected application for SFH loan. If an application for a SFH loan is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply. (Renumbered 08-20-93, SPECIAL PN.)

§1955.147 Sealed bid sales.

This section provides guidance on the sale of all Rural Development inventory property, except suitable FP real property which will not be sold by sealed bid. Before a sealed bid sale, the State Director will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP or surplus property, credit may be extended to facilitate the sale. When a group of properties is to be sold at one time, advertising may indicate that Rural Development will consider bids on an individual property or a group of properties and Rural Development will accept the bid or bids which are in the best financial interest of the Government. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate

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security. Sealed bids will be made on Form RD 1955-46 with any accompanying deposit in the form of cashier's check, certified check, postal or bank money order or bank draft payable to the Agency. For program and suitable property, the minimum deposit will be the same as outlined in § 1955.130(e)(1) of this Subpart. For NP or surplus property, the minimum deposit will be ten percent (10%). The bid will be considered delivered when actually received at the Agency office. All bids will be date and time stamped. Advertisements and notices will request bidders to submit their bid in a sealed envelope marked as follows: "SEALED BID OFFER _____*" (*Insert "PROPERTY IDENTIFICATION NUMBER"). (Revised 03-08-90, SPECIAL PN.)

(a) Opening bids. Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the Agency office. The County Supervisor, District Director, or State Director or his/her designee will open the bids with at least one other Agency employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of deposit, any conditions of the bid. The tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and retained in the inventory file.

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

(c) Unsuccessful bids. Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

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(d) Disqualified bids. Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the Agency official approving the sale.

(e) Failure to close. If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages and will be remitted according to RD Instruction 1951-B for application to the General Fund. However, if a credit sale complying with the Agency notice is an element of the offer and the Agency disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director or State Executive Director may authorize either another sealed bid or auction sale or direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) No acceptable bid. Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.108(d) of this Subpart.
(Revised 02-15-89, PN 102.)

§ 1955.148 Auction sales. (Revised 08-20-97, PN 280.)

This section provides guidance on the sale of all inventory property by auction, except FSA real property. Before an auction, the State Director, with the advice of the National Office for organizational property, will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and property. For NP and property, credit may be offered to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. For program property sales, no preference will be given to program purchasers. The State Director will also consider whether an Agency employee will conduct an auction or whether the services of a professional auctioneer are necessary due to the complexity of the sale. When the services of a professional auctioneer are advisable, the services will be procured by contract in accordance with RD Instruction 2024-A (available in any Agency Office). Chattel property may be sold at public auction that is widely advertised and held on a regularly scheduled basis without solicitation. Form RD 1955-46 will be used for auction sales. At the auction, successful bidders will be required to make a bid deposit. For program and suitable property, the bid deposit will be the same as outlined in § 1955.130(e)(1) of this Subpart. For NP property sales, a bid deposit of 10 percent is required. Deposits will be in the form of cashier's check, certified check, postal or bank money order or bank draft payable to the Agency, cash or personal checks may be accepted when deemed necessary for a

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successful auction by the person conducting the auction. Where credit sales are authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept a bid which requests credit in excess of the market value. When the highest bid is lower than the minimum amount acceptable to the Agency, negotiations should be conducted with the highest bidder or in turn, the next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default, the approval official will remit the bid deposit as a Miscellaneous Collection according to RD Instruction 1951-B. The bid deposit will be remitted only when the bidder defaults; otherwise it will be used at closing towards a downpayment or closing costs, as applicable. The closing will be conducted in accordance with the procedures prescribed in this Subpart for the type property and program involved.

§ 1955.149 Exception authority.

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

(b) The Administrator may authorize withholding sale of surplus farm inventory property temporarily upon making a determination that sales would likely depress real estate market and preclude obtaining at that time the best price for land.

RD Instruction 1955-C

§ 1955.150 State Supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this Instruction to provide guidance to Agency officials. State Supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State Law, and an opinion from OGC.

Attachments: Exhibits A, B, C, D, E, G, H, and I.

oOo

NOTICE OF FLOOD, MUDSLIDE HAZARD OR WETLAND AREA

TO:

DATE:

This is to notify you that the real property located at _____

_____ is in a floodplain, wetland or area identified by the Federal Insurance Administration of the Federal Emergency Management Agency as having special flood or mudslide hazards. This identification means that the area has at least one percent chance of being flooded or affected by mudslide in any given year. For floodplains and wetlands on the property, restrictions are being imposed. Specific designation(s) of this property is (are) (special flood) (mudslide hazard) (wetland)*. The following restriction(s) on the use of the property will be included in the conveyance and shall apply to the purchasers, purchaser's heirs, assigns and successors and shall be construed as both a covenant running with the property and as equitable servitude subject to release by Rural Development when/if no longer applicable:

(INSERT RESTRICTIONS)

Rural Development will increase the number of acres placed under easement, if requested in writing, provided that the request is supported by a technical recommendation of the U.S. Fish and Wildlife Service (FWS). Where additional acreage is accepted by Rural Development for conservation easement, the purchase price of the inventory farm will be adjusted accordingly.

(County Supervisor, District Director or Real Estate Broker)

ACKNOWLEDGEMENT

DATE: _____

I hereby acknowledge receipt of the notice that the above stated real property is in a (special flood) (mudslide hazard) (wetland)* area and is subject to use restrictions as above cited. [Also, if I purchase the property through a credit sale, I agree to insure the property against loss from (floods) (mudslide)* in accordance with requirements of the Farmers Home Administration.]

(Prospective Purchaser)

* Delete the hazard that does not apply.

Exhibit B in PDF ONLY.

Exhibit C in PDF ONLY.

Exhibit D in PDF ONLY.

(Name and Address of Offeror)

Date:

RE: (Insert address of inventory property)

Dear

Reference is hereby made to your offer to purchase the above referenced Rural Development inventory property. Please be advised that:

- _____ 1. Your offer has been accepted. Please contact this office to discuss proceeding with the transaction.
- _____ 2. Another offer has been accepted, however, your offer is being held as a back-up offer.
- _____ 3. Per the listing notice, the property is reserved for purchase by program applicants for the first 45 days after listing or by any reduction in price. Your offer will be considered after this 45-day period if no acceptable offer from a program applicant is received.
- _____ 4. Your offer could not be accepted for the following reason(s):
 - _____ Less than the listed sale price.
 - _____ An offer from a program applicant has been accepted.
 - _____ Another offer has already been accepted.
 - _____ The property is no longer for sale.
 - _____ (For back-up offers) The prior offer has been accepted.
 - _____
- _____ 5. The property has been withdrawn from sale.
- _____ 6. A previous accepted offer has been cancelled. The property has been relisted for sale.
- _____ 7. The has been relisted for sale at the following term: Price \$_____ Terms:_____.
- _____ 8. _____

Please feel free to contact this office should you have any questions regarding this letter. Thank you for your interest in purchasing Rural Development inventory property.

Sincerely

COUNTY SUPERVISOR

(8-24-88) SPECIAL PN

FACT SHEET

RURAL DEVELOPMENT SFH INVENTORY PROPERTY FOR USE IN THE HUD HOPE 3 PROGRAM

On November 5, 1991, Rural Development entered into a Memorandum of Understanding with the Department of Housing and Urban Development (HUD) to coordinate the use of Rural Development Single Family Housing (SFH) inventory properties for the benefit of Participants in the HUD HOPE 3 Program.

BACKGROUND

Rural Development has SFH properties in inventory as a result of liquidation of its loan security. Inventory properties which meet Rural Development program standards are repaired and sold, preferably to program applicants on program credit terms. Nonprogram properties are broom cleaned and sold for cash or on nonprogram credit terms.

HUD, through the HOPE 3 program, provides homeownership opportunities for low income families and individuals (Participants) by providing grantees (Grantees) with Federal assistance to initially acquire and rehabilitate government owned properties. Grantees acquire SFH properties from government agencies and sell them to Participants at affordable prices, after making needed repairs. Alternatively, Grantees can facilitate direct acquisition and repair of housing by Participants by providing financing, funds for down payments, repairs and/or subsidized interest rates.

Rural Development RESPONSIBILITIES

1. Upon request, Rural Development will provide to Grantees lists of all SFH properties in inventory in the grantees' areas of interest.
2. Rural Development will consider written offers from Grantees, for themselves or a Participant, to be closed within 30 days of receipt of a written offer or completion of repairs made by Rural Development. Repairs will normally be completed within 60 days of the decision to make repairs.
3. Whether or not the property was listed for sale, Rural Development will give preference to offers from Grantees and Participants for inventory sales.
4. If Rural Development has listed the property for sale, the listing will be withdrawn when the written offer from a Grantee, for itself or on behalf of a participant, is received by Rural Development. Rural Development will not pay a sales commissions for properties sold to Participants or Grantees.
5. Rural Development will sell properties to Grantees or Participants with a 10 percent price discount of the current market value of the listed price whichever is less.

6. If Rural Development contracts for repairs have not been awarded, repairs will not be made, except for decent, safe and sanitary (DSS) requirements. Rural Development will repair properties to meet Rural Development DSS standards if the value of the property increases more than the cost of repairs. Otherwise, Rural Development will sell properties with the DSS deed restrictions. Grantees are responsible for meeting DSS conditions and having the deed restrictions removed before Participants occupy the dwelling.

7. Rural Development may sell program properties to Participants with Rural Development program financing and 33 year terms or nonprogram properties to Participants with Rural Development nonprogram financing and 30 year terms. The buyer must meet all other Rural Development eligibility requirements. No down payment is required.

8. Rural Development may sell program or nonprogram properties to Grantees or Participants for cash.

9. Rural Development will close the sale within 30 days of receipt of the written offer or completion of repairs made by Rural Development. If Grantee or Participant cannot close within 30 days, Rural Development will reject the offer.

HUD HOPE 3 GRANTEE AND PARTICIPANT'S RESPONSIBILITIES

1. Grantee will operate the HOPE 3 Program in accordance with HUD regulations.

2. Grantee will request list of SFH inventory properties from Rural Development County or State Office for the areas of interest.

3. Grantee will submit to Rural Development County Office a written offer for each property it wants to buy for itself or it wants to assist a Participant in buying.

4. Grantee will repair or assist Participant in repairing the property, and, if there is a DSS clause, will request Rural Development to remove the DSS clause from the deed after repairs are made and before the property is occupied.

5. Grantee will close, or assist the Participant in closing, the sale within 30 days of written offer or completion of repairs done by Rural Development. Grantee may provide all or part of the purchase price to reduce the amount of Rural Development loan needed.

CONSERVATION EASEMENT FOR WETLANDS

[Use this exhibit to establish easements on wetlands with full restrictive conditions (including adjacent nonwetland buffers).]

CONSERVATION EASEMENT RESERVATIONS IN THE UNITED STATES

By this instrument there is reserved in the UNITED STATES OF AMERICA, its successors and assigns, a perpetual conservation easement on the property conveyed by this deed.

This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended. The restrictions and covenants contained in this easement constitute a perpetual servitude on and run with the property. The Grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States is reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

I. DESCRIPTION OF THE EASEMENT AREA.

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description, or reference to appended plat. In certain cases, a specific route on and across the easement area for landowner access to other portions of the property for farming or other uses may be designated if such access is not reasonably available from other routes outside the easement area.]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, trail, etc] over the property conveyed by this deed as follows:

[legal description -- center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing].

The above right of way shall be sufficiently wide (not to exceed ____feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funds, the easement manager commensurate with their respective levels of use.]¹ In the event that the location of a road or trail becomes impractical due to erosion, Acts of God, or other cause, said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

II. COVENANTS BY THE LANDOWNER.

A. No dwellings, barns, outbuildings or other structures shall be built within the easement area.

B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner including: (1) cutting or mowing; (2) cultivation; [(3) grazing;] (4) harvesting wood products; (5) burning; (6) placing of refuse, wastes, sewage, or other debris; (7) draining, dredging, channeling, filling, dicing, pumping, diking, impounding and related activities; or (8) diverting the natural flow of surface or the underground waters into, within, or out of the easement area.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all Federal, state and local laws for the control of noxious or other undesirable plants on the easement area. The responsibility for such plant control may be assumed in writing by the easement manager where the control or manipulation of such plants is deemed by the easement manager to affect easement management programs or policies.

[D. Cattle or other stock shall not be permitted on the easement area, except that the easement manager shall permit access to and use of waters within the area necessary for stock watering under such terms and conditions as the easement manager deems necessary to protect and further the purposes of this easement, provided:

- (1) The easement manager bears the costs of building and maintaining fencing or other facilities necessary to preclude stock from entering the easement area;
- (2) the easement manager shall consult with the landowner to determine the need for and the scope of fencing; and

¹ Use when access to the easement area is over road or roadway that will be constructed or require maintenance.

(3) access for stock watering need not be permitted where other waters are reasonably available from other sources outside the easement area.]²

III. RIGHTS RESERVED IN THE UNITED STATES.

The United States, on behalf of itself its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access to the easement area in order to conduct wetlands management, monitoring, and easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any right of way described in paragraph I. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

B. The right but not the obligation to install, operate, and maintain structures for the purpose of reestablishing, protecting, and enhancing wetlands functional values including the taking of construction materials to and from said sites.

C. The right to establish or re-establish vegetation through seedings, plantings, or natural succession.

D. The right but not the obligation to manipulate vegetation, topography and hydrology on the easement area through diking, pumping, water management, excavating, island construction, burning, cutting, pesticide application, fertilizing, and other appropriate practices. The easement manager shall consult with the landowner prior to any such manipulatory action occurring in order to determine the most appropriate method to avoid possible damage to the property(s) adjoining the easement area.

E. The right to conduct predator management activities.

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² Use only when paragraph III-F is used.

F. [The right but not the obligation to construct and maintain fences in order to prevent or regulate grazing or other type of encroachment on the easement area.]³

G. [Notwithstanding permissive provisions of State or Federal law, the right to prohibit or regulate hunting or fishing or other taking of migratory birds, fish and wildlife. This right to prohibit any of these activities shall be effected by (1) the easement manager posting the area, or (2) otherwise giving notice of the prohibitions to the landowner.]⁴

H. [The right to exclude landowner and/or public entry, if such entry is deemed to pose a threat to fish and wildlife or their habitat.]⁵

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used where a Federal agency (other than U.S. Fish and Wildlife Service) or a state fish and wildlife agency is the easement manager.]

A. This easement shall be managed and administered by [name agency] which may be referred to as the "easement manager."

B. For purposes of management and administration of this easement, except as provided in paragraph V-H, all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may, from time to time, be promulgated under its general governmental authorities.

³ Use only if the easement manager intends to fence the easement area or a portion of the easement area.

⁴ Use only when this is a necessary precondition for the easement manager to accept the easement.

⁵ Use only when FWS recommend, with recommendation based upon severe existing or potential threat to fish and wildlife.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used for management by the U.S. Fish & Wildlife Service.]

A. All right, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights in paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of wetlands functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

V. GENERAL PROVISIONS.

A. The agreed upon purposes of this reservation are the protection and restoration of the wetland areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "wetland" is defined and determined by the Natural Resources Conservation Service of the U.S. Department of Agriculture in accordance with Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et. seq.). Any ambiguities in this easement shall be construed in a manner which best effectuates wetland protection and restoration and fish and wildlife purposes.

B. Any subsequent amendment to or repeal of any federal law or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, wetland management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of wetland functional values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land recorded of the respective county in which the property is located.

E. The easement reservation does not authorize public entry upon or use of land. [Unless the easement manager prohibits public entry, the landowner may permit it at the landowner's discretion.]⁶

F. [Subject to paragraph III-G in this easement,]⁷ The landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

G. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H. The easement manager shall be the agent of the United States or its successors or assigns. The easement manager shall have all discretionary powers of the United States under this easement, except that the power to release or modify, in any manner, the terms of this easement may be exercised only by a designated employee of the United States Department of Agriculture. Any such succession or assignment of authority must be by express written language, and no power to modify or release all or part of the easement may be inferred from or implied by the conduct of any individual, entity or governmental entity. In the performance of any rights of the easement manager under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

[VI. STATE OR LOCAL REQUIREMENTS.]

[Insert any State or local wetland protection requirements that are more restrictive than those contained in the preceding paragraphs.]

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⁶ Use this sentence whenever paragraph III. H is used.

⁷ Use this introductory phrase whenever paragraph III. G is used.

CONSERVATION EASEMENT FOR FLOODPLAINS

[Use only for floodplains (no wetlands)]

Conservation Easement Reservations in the United States

By this instrument there is reserved in the UNITED STATES OF AMERICA, its successors and assigns, a perpetual conservation easement on the property conveyed by this deed.

This easement is under the authority and in furtherance of the provisions of federal law, including sections 331 and 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 and 1985) as amended, and Executive Order 11988 providing for the protection of floodplains. The restrictions and covenants contained in this easement constitutes a perpetual servitude on and run with the property. The grantee and all successors and assigns ("landowner") under this deed covenant with the United States to do or refrain from doing, severally and collectively, the various acts mentioned later in this easement. The United States is reserved the rights enumerated in this easement for itself and its successors, agents and assigns.

I. DESCRIPTION OF THE EASEMENT AREA AND ACCESS THERETO:

The area subject to this Conservation Easement, referred to herein as the "easement area" is described as follows:

[legal description, or reference to appended plat]

Without limiting the general and specific rights of access in paragraph III-A, for access to the easement area, a right of way for an [existing] [road, trail, etc.] over the property conveyed by this deed as follows:

[legal description -- center line survey, P-line survey or reference to other location of the road or path, or reference to appended plat or drawing]

The above right of way shall be sufficiently wide (not to exceed ___ feet) to accommodate access by vehicles and equipment deemed necessary or desirable by the easement manager for easement management. [Any costs associated with road construction and maintenance shall be shared by the landowner and, subject to the availability of funds, the easement manager commensurate with their respective levels of use.] In the event that the location of a road

or trail becomes impractical due to erosion, Acts of God, or other cause, said location can be reasonably adjusted to accommodate access in accordance with the rights of paragraph III-A herein.

II. COVENANTS BY THE LANDOWNER.

A. No dwellings, barns, outbuildings, or other structures shall be built within the easement area when the easement manager determines, in consultation with the landowner, that a practicable alternative location outside the easement area is available to the landowner. Also, no dwellings, barns, outbuildings, or other structures shall be built within the easement area unless the construction conforms, at minimum, to the requirements of the National Flood Insurance Program (NFIP). Repairs to existing structures within the easement area may be made subject to the NFIP. The construction of fences needed for the purpose of livestock retention will be permitted within the easement area provided they do not impede the flow of water.

B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned by or under the control of the landowner, including: (1) placing earthen or other material fill on the easement area, or (2) placing of refuse, wastes, sewage, or other debris. This restriction does not apply to application of agricultural chemicals in accordance with Environmental Protection Agency Use Restrictions, except that application of agricultural chemicals within 100 feet of a stream or river is prohibited. The landowner shall have the right to carry on farming practices such as grazing, hay cutting, plowing, working and cropping the easement area without further degradation of floodplain values.

C. Notwithstanding the provisions of paragraph II-B above, the landowner shall be responsible for compliance with all federal, state and local laws for the control of noxious or other undesirable plants on the easement area.

D. Notwithstanding the provisions of paragraph II-B above, the landowner may establish or repair stream-bank riprap if such actions are necessary to protect the integrity of fields or buildings and provided such riprap is performed in consultation with the easement manager and under the direction of appropriate Federal, State, and local authorities.

III. RIGHTS RESERVED IN THE UNITED STATES.

The United States, on behalf of itself, its successors or assigns, reserves and retains the right, at its sole discretion, to manage the easement area including the following authorities:

A. The right of reasonable ingress and egress on and across the property conveyed by this deed as of the date of this instrument, whether or not adjacent or appurtenant to the easement area, for access to the easement area in order to conduct floodplains management, monitoring, and easement enforcement activities. The easement manager may utilize vehicles and other reasonable modes of transportation for access purposes overland or on any right of way described in paragraph I.

B. In the event that the use of the described access right of way over the property conveyed by this deed is not practical for any reason, the easement manager may utilize any convenient route of access to the easement area over said property. With the concurrence of the easement manager, the landowner may provide a designated route for such access to and from the easement area so that damage to farm operations can be reasonably avoided.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used where a Federal agency (other than U.S. Fish and Wildlife Service) or a State fish and wildlife agency is the easement manager.]

A. This easement shall be managed and administered by (name agency] which may be referred to as the "easement manager."

B. For purposes of management and administration of this easement, except as provided in paragraph V- all rights of the United States in this easement are assigned to the easement manager. The easement manager may enforce all the terms and conditions of this easement, along with all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under its general governmental authorities.

IV. EASEMENT MANAGEMENT AND ADMINISTRATION.

[Provision to be used for management by the U.S. Fish & Wildlife Service.]

A. All rights, title and interests of the United States in this easement are assigned to the Secretary of the Interior for administration by the United States Fish and Wildlife Service as part of the National Wildlife Refuge System pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd et seq. The U.S. Fish and Wildlife Service may enforce all the terms and conditions of this easement, along with exercising all rights and powers reserved in this easement through such general or specific regulations or orders as have been or may be, from time to time, promulgated under the authority of the Secretary of the Interior. Notwithstanding the above rights in paragraph III retained by the United States, the U.S. Fish and Wildlife Service may permit the landowner to pursue such activities on said sites as would be consistent with the preservation and enhancement of floodplain functional values.

B. As used in this easement, the term "easement manager" shall refer to the authorized official of the U.S. Fish and Wildlife Service.

V. GENERAL PROVISIONS.

A. The agreed upon purposes of this reservation are the protection and restoration of the floodplain areas existing as of the date of this conveyance as well as protection and enhancement of plant and animal habitat and populations. A "floodplain" is defined by reference to section 6(c) of Executive Order 11988. Any ambiguities in this easement shall be construed in a manner which best effectuates floodplain protection and restoration and fish and wildlife purposes.

B. Any subsequent amendment to or repeal of any Federal law, or regulations which authorizes this reservation shall not affect the rights reserved by the United States or subsequently held by its successors or assigns.

C. For purposes of this easement, floodplain management rights reserved by the United States include, but are not limited to, inspection for compliance with the terms of this easement; research regarding water, wetlands, fish and wildlife and associated ecology; and any other activity consistent with the preservation and enhancement of floodplain values.

D. The United States, its successors and assigns, including the easement manager, shall have the right to make surveys, take photographs and prepare such other documentation as may be necessary or desirable to administer the provisions of this easement. Any such map, plat or other suitable document may be recorded in the land records of the respective county in which the property is located.

E. The easement reservation does not authorize public entry upon or use of land.

F. The landowner and invitees may hunt and fish on the easement area in accordance with all federal, state, and local game and fishery regulations.

C. This easement shall be binding on the landowner, and the landowner's heirs, successors or assigns. The landowner covenants to warrant and defend unto the United States, its successors or assigns, the quiet and peaceable use and enjoyment of the land and interests in the land constituting this reservation against all claims and demands.

H. The easement manager shall be the agent of the United States or its successors and assigns. The easement manager shall have all discretionary powers of the United States under this easement except that the power to release or modify, in any manner, the terms of this easement may be exercised only by a designated employee of the United States Department of Agriculture. Any such succession or assignment of authority must be by express written language, and no power to modify or release all or part of the easement may be inferred from or implied by the conduct of any individual, or governmental entity. In the performance of any rights of the easement manager under this easement, the easement manager may permit, contract or otherwise provide for action by employees, agents, or assigns which may include the landowner.

[VI. STATE AND/OR LOCAL REQUIREMENTS.]

[Insert any State and/or local floodplain protection requirements that are more restrictive than those contained in the preceding paragraphs.]

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