

(b) Assistance may be provided as any of the following:

(1) Reimbursement for expenses relating to transportation assistance on or after January 10, 1997, specifically related to providing access to existing feed supplies or to the livestock;

(2) Reimbursement for expenses relating to eligible livestock feed purchased on or after January 10, 1997; or

(3) Donation of CCC-owned feed grains.

(c) Requests for reimbursement for transportation assistance and eligible livestock feed purchases shall include verifiable sales receipts, service agreements, or any other documentation as determined by the FSA county committee.

(d) Individuals who provide assistance to livestock which is in danger of perishing without immediate assistance or where the owner of the livestock is not known, shall only receive CCC-owned feed grain on a donation basis, not to exceed the amount of feed grain actually used.

(e) Assistance shall not exceed the monetary value of multiplying the number of livestock, by type and weight range, by the allowance per day in pounds of corn as determined in accordance with § 1439.3, by \$0.05 per pound, by a feeding period of 15 days.

(f) For snow removal, the maximum assistance shall be the lesser of:

(1) Actual cost to move snow to gain access to the available feed or stranded livestock; or

(2) The maximum assistance calculated in accordance with paragraph (e) of this section.

(g) For feed purchases, the maximum assistance shall be the lesser of:

(1) The monetary value of purchased eligible feed; or

(2) The maximum assistance calculated in accordance with paragraph (e) of this section.

(h) The maximum assistance for donated grain is a 15 day feed allowance calculated in accordance with paragraph (e) of this section.

4. Sections 1439.701 and 1439.702 are added as follows:

Subpart—Foundation Livestock Relief Program (FLRP)

§ 1439.701 General statement.

(a) This subpart sets forth the terms and conditions of the FLRP. This program may be authorized by DAFP, upon a determination that foundation livestock owners have been forced to feed excessive quantities of livestock feed and a Presidential disaster declaration has been issued for the State

or county as a result of snow and freezing and related conditions. Under the program, CCC will provide cash reimbursement for eligible livestock feed purchases to the livestock owner and other persons or entities (public and private), whose usage of normal livestock feed supplies was adversely affected by natural disasters. Cost-share assistance is provided at 30 percent of the lesser of actual eligible livestock feed costs shown on acceptable feed purchase documents or the calculated feed allowance for eligible livestock for a period not to exceed 30 days. This program shall terminate at the conclusion of the 1996 livestock feed crop year.

(b) As determined by DAFP, FLRP may be authorized for any length of time not to exceed a 30-day feeding period. Subsequent feeding periods of the same or different duration may be designated by DAFP for the same or related disaster conditions.

§ 1439.702 Assistance.

(a) Assistance is limited to livestock owners who have eligible foundation or replacement livestock, as determined by DAFP. Eligible livestock includes beef and dairy cattle, buffalo and beefalo, sheep, goats, swine, and equine animals used to raise livestock that will be used for human consumption or in the production of food or fiber on the owner's farm.

(b) Assistance shall be provided as a 30 percent cost-share payment based on the lesser of:

(1) Eligible livestock feed purchased and received during the period designated by DAFP, or

(2) The calculated feed allowance for the eligible livestock for up to 30 days, as determined by DAFP.

(c) Requests for reimbursement of eligible livestock feed purchases shall include verifiable sales receipts and any other documentation the FSA county committee requires.

(d) Assistance shall not exceed the monetary value of multiplying the number of livestock, by type and weight range, by the allowance per day in pounds of corn as determined in accordance with § 1439.3, by \$0.05 per pound, by the number of days in the feeding period designated by DAFP.

Signed at Washington, DC, on August 14, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97-22128 Filed 8-20-97; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1955

RIN 0560-AE88

Implementation of the Inventory Property Management Provisions of the Federal Agriculture Improvement and Reform Act of 1996

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This implements provisions of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) that affect the farm credit programs of the Farm Service Agency (FSA), formerly administered by the Farmers Home Administration (FmHA). The provisions of this rule affect the acquisition, management and disposal of inventory farm property by FSA.

DATES: Effective August 21, 1997. Comments must be submitted by October 20, 1997.

ADDRESSES: Submit written comments to the Farm Credit Programs Loan Servicing and Property Management Division, Farm Service Agency, United States Department of Agriculture, Room 5449-S, Stop 0523, 1400 Independence Avenue, SW, Washington, DC 20013-0523.

FOR FURTHER INFORMATION CONTACT: James P. Fortner, Senior Realty Specialist, Farm Service Agency; Telephone: 202-720-1976; Facsimile: 202-690-0949. E-mail: jfortner@wdc.fsa.usda.gov

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Farm Service Agency (FSA) certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601).

In addition, the Regulatory Flexibility Act is not applicable to this rule since

the Farm Service Agency (FSA) is not required by 5 U.S.C. 553, or any other provisions of law, to publish a notice of proposed rulemaking to effect these administrative changes.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, Environmental Program. The issuing agencies have determined that this action does not significantly affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104-4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FSA generally must prepare a written statement, including a cost-benefit assessment, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons set forth in the Notice regarding 7 CFR part 3015, subpart V

(48 FR 29115, June 24, 1983), the programs within this rule are not affected by Executive Order 12372.

Programs Affected

This rule does not affect any programs listed in the Catalog of Federal Domestic Assistance.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575-0109 and 0575-0110 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This interim rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Discussion of the Interim Rule

On April 4, 1996, the 1996 Act was signed into law and required certain provisions to be implemented either immediately or no later than 90 days from the date of enactment. The specific changes to the acquisition, management, and disposal of real and chattel property which served as security for FSA farm credit programs loans are discussed below:

Liquidation and Acquisition

The 1996 Act eliminated the Leaseback/Buyback program which provided the former borrower and owner, the borrower's spouse or children, stockholder in the corporation if the borrower and owner was a corporation held exclusively by members of the same family, or the previous operator with rights to lease back an acquired property for up to 5 years with an option to purchase. Several changes were made by the 1996 Act in relationship to the voluntary conveyance of property by Native American borrowers when new property is located within the boundaries of an Indian reservation. Leaseback/buyback rights as well as the regular leasing authority were eliminated for Native American borrowers. See § 638(1) of the 1996 Act which eliminated the leaseback/buyback program, as well as most of the Agency's authority to lease inventory property (previously contained in § 335(e)(3) of the Consolidated Farm and Rural Development Act) (CONACT) and to resolve disputes over lease terms (previously contained in § 335(e)(9) of the CONACT).

Under the program provided by the 1996 Act, if the Native American borrower and owner does not

voluntarily convey the real property to FSA, FSA will, not less than 30 days prior to the foreclosure sale of the property, provide the Native American borrower and owner with the option of (1) requiring FSA to assign the loan and security instruments to the Secretary of the Interior, or (2) requiring FSA to assign the loan and security instruments to the tribe having jurisdiction over the reservation where the property is located pursuant to § 335(e)(1)(D)(v)(I)(bb) of the CONACT. If the Native American borrower and owner require FSA to assign the loan and security instruments to the Secretary of the Interior and the Secretary of the Interior agrees to the assignment, pursuant to § 335(e)(1)(D)(v)(aa) the Secretary of Agriculture is released from all further responsibility for collection of the loan.

If the Native American borrower and owner elect to require FSA to assign the loan to the tribe, the tribe must assume the loan and the loan terms will be restructured to be consistent with Indian Land Acquisition Loans made pursuant to 25 U.S.C. § 488 and the principal amount will be the lesser of the fair market value of the property or the outstanding principal and interest on the date of the assignment. While the narrow language of § 335(e)(1)(D)(v)(I)(bb) only provides for the assignment of the loan to the tribe and could be interpreted as releasing the Government's interest in the repayment of the loan, in the context of the amendment made to § 335(e)(1)(D) by the 1996 Act, there is no indication that Congress intended for the Government to release the Government's right to be repaid and in effect make a grant to the tribe. Had Congress intended for the loan to be transferred to the tribe with no repayment responsibility, language similar to the language for assignment to the Secretary of the Interior could have been used. We interpret § 335(e)(1)(D)(v)(III) as requiring that, if the loan is assigned to the tribe, it must be assumed by the tribe as well.

Management

The 1996 Act eliminated FSA's ability to lease inventory farm property except to those beginning farmers or ranchers who are selected to purchase an inventory property but are unable to do so due to a lack of Agency credit funds. Leases with beginning farmers or ranchers who were selected to purchase an inventory property on a credit sale may not exceed 18 months or the date that FSA credit assistance becomes available, whichever is earlier.

We have added a paragraph asserting FSA's limited authority to lease

property pursuant to § 335(b) of the CONACT. While the statute is not free from doubt because § 638(2) of the 1996 Act limits leasing to beginning farmers and ranchers, § 335(b) was not repealed by the 1996 Act. It states as follows:

Except as provided in subsections (c) and (e), real property administered under the provisions of this title may be operated or leased by the Secretary for such period or periods as the Secretary may deem necessary to protect the Government's investment therein.

Based on this authority as modified by the limitation that inventory property should be sold within 105 days of acquisition, we have provided limited authority to lease property upon the approval of the Administrator when it is impossible to sell it.

Disposal

The 1996 Act placed new requirements on FSA to dispose of inventory property. The definition of a beginning farmer contained in § 640(1) of the 1996 Act was amended to raise the maximum amount of farm or ranch property that may be owned from 15 percent to 25 percent of the median farm size in the county in which the property is located. However, the Agency will use 25 percent of the mean rather than the median farm size in this definition since median farm sizes are unavailable in the Census of Agriculture. Inventory must be advertised for sale no later than 15 days after acquisition by the Agency. Not later than 75 days from the date of acquisition, the Agency will offer to sell inventory property to qualified beginning farmers or ranchers at the current market value based on a current appraisal. Based on the statutory language contained in § 638(2) of the 1996 Act which provides a priority in the sale of inventory property only to beginning farmers and ranchers, the Agency has removed the regulatory priorities previously contained in § 1955.107(f)(1). The previous priorities were as follows: first priority to beginning farmers and ranchers who were also socially disadvantaged applicants (SDA); second priority to beginning farmers and ranchers; third priority to operators of not larger than family-size farms who were also SDAs; fourth priority to operators of not larger than family size farms who meet the Agency's eligibility requirements and fifth priority to operators of not larger than family size farms who are not eligible for Agency credit. Under this interim rule, the only remaining priority is to beginning farmers and ranchers who can purchase the property at the current market value based on a current

appraisal. If more than one qualified beginning farmer or rancher submits an application to purchase an inventory property, FSA will select a purchaser through a random selection process. Appeal rights for participation in the random selection as a qualified beginning farmer or rancher were eliminated by § 638(2) of the 1996 Act and replaced by an expedited review by the State Executive Director that is administratively final. If inventory property is not sold to a beginning farmer or rancher within 75 days from acquisition, § 638(2) of the 1996 Act requires FSA, not later than 30 days after the 75-day period, to sell the property by means of a public sale, such as a public auction or sealed bids, at the best price obtainable.

A transitional rule provides that properties under a lease upon passage of the 1996 Act would be advertised for sale no later than 60 days after the lease expires and properties in inventory upon passage of the 1996 Act, but not under a lease, would be advertised no later than 60 days from April 4, 1996. The transitional rule was implemented in Notice FC-37 which informed FSA county and State offices that property in inventory and not leased before April 5, 1996, will be offered for sale within 60 days of the enactment of the 1996 Act. The Notice also stated that property then under the lease will be offered for sale no later than 60 days after the lease expires. The transitional rule for leased properties is also contained in § 1955.107(a) of this rule.

While section 638 of the 1996 Act by its terms applies to all property acquired under the CONACT, and thus applies to non-FSA programs, these programs rarely acquire or lease inventory property. Therefore, compliance with the 1996 Act will be achieved by guidance given on a case-by-case basis, rather than through published procedures, by requiring program officials to immediately contact the National Office whenever they acquire inventory property. See § 1955.108.

The 1996 Act modified how conservation easements are placed on wetlands located on inventory property. Wetland conservation easements will only be placed on those wetlands or converted wetlands located on inventory property that were not considered as cropland on the date of acquisition and were not used for farming at any time during the 5-year period prior to acquisition. The 1996 Act also amended the process whereby inventory property can be transferred to Federal or State agencies for conservation purposes. The 1996 Act requires that, upon receipt of a request

for transfer, FSA must provide at least two public notices, hold at least one public meeting if requested, and consult with the Governor and at least one elected county official of the State and county where the property requested for transfer is located.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government property. Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

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

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

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

2. Section 1955.3 is amended by removing the definition of "Leaseback/Buyback Property."

3. Section 1955.4(a) is amended by removing the word "Assistant" in the first sentence and adding in its place the word "Deputy."

4. Section 1955.9 is revised to read as follows:

§ 1955.9 Requirements for voluntary conveyance of real property located within a federally recognized Indian reservation owned by a Native American borrower-owner.

(a) The borrower-owner is a member of the tribe that has jurisdiction over the reservation in which the real property is located. An Indian tribe may also meet the borrower-owner criterion if it is indebted for Farm Credit Programs loans.

(b) A voluntary conveyance will be accepted only after all preacquisition primary and preservation servicing actions have been considered in accordance with subpart S of part 1951 of this chapter.

(c) When all servicing actions have been considered under subpart S of part 1951 of this chapter and a positive outcome cannot be achieved, the following additional actions are to be taken:

(1) The county official will notify the Native American borrower-owner and the tribe by certified mail, return receipt requested, and by regular mail if the certified mail is not received, that:

(i) The borrower-owner may convey the real estate security to FSA and FSA will consider acceptance of the property into inventory in accordance with paragraph (d) of this section.

(ii) The borrower-owner must inform FSA within 60 days from receipt of this notice of the borrower and owner's decision to deed the property to FSA;

(iii) The borrower-owner has the opportunity to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located, or counsel, to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under Agency regulations;

(2) If the borrower-owner does not voluntarily deed the property to FSA, not later than 30 days before the foreclosure sale, FSA will provide the Native American borrower-owner with the following options:

(i) The Native American borrower-owner may require FSA to assign the loan and security instruments to the Secretary of the Interior. If the Secretary of the Interior agrees to such an assignment, FSA will be released from all further responsibility for collection of any amounts with regard to the loans secured by the real property.

(ii) The Native American borrower-owner may require FSA to complete a transfer and assumption of the loan to the tribe having jurisdiction over the reservation in which the real property is located if the tribe agrees to the assumption. If the tribe assumes the loans, the following actions shall occur:

(A) FSA shall not foreclose the loan because of any default that occurred before the date of the assumption.

(B) The assumed loan shall be for the lesser of the outstanding principal and interest of the loan or the fair market value of the property as determined by an appraisal.

(C) The assumed loan shall be treated as though it is a regular Indian Land Acquisition Loan made in accordance with subpart N of part 1823 of this chapter.

(3) If a Native American borrower-owner does not voluntarily convey the real property to FSA, not less than 30 days before a foreclosure sale of the property, FSA will provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of the following:

(i) The sale;

(ii) The fair market value of the property; and

(iii) The ability of the Native American borrower-owner to require the assignment of the loan and security instruments either to the Secretary of the Interior or the tribe (and the consequences of either action) as provided in § 1955.9(c)(2).

(4) FSA will accept the offer of voluntary conveyance of the property unless a hazardous substance, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is located on the property which will require FSA to take remedial action to protect human health or the environment if the property is taken into inventory. In this case, a voluntary conveyance will be accepted only if FSA determines that it is in the best interests of the Government to acquire title to the property.

(d) When determining whether to accept a voluntary conveyance of a Native American borrower-owner's real property, the county official must consider:

(1) The cost of cleaning or mitigating the effects if a hazardous substance is found on the property. A deduction equal to the amount of the cost of a hazardous waste clean-up will be made to the fair market value of the property to determine if it is in the best interest of the Government to accept title to the property. FSA will accept the property if clear title can be obtained and if the value of the property after removal of hazardous substances exceeds the cost of hazardous waste clean-up.

(2) If the property is located within the boundaries of a federally recognized Indian reservation, and is owned by a member of the tribe with jurisdiction over the reservation, FSA will credit the Native American borrower-owner's account based on the fair market value of the property or the FSA debt against the property, whichever is greater.

5. Section 1955.15(b)(3) is amended by revising the reference to "§ 1955.137(e)" in the first sentence to read "§ 1955.137(c)" and the reference to "§ 1955.137(b)" in the first sentence to read "§ 1955.137(c)."

6. Exhibit G of subpart A is amended by removing the words "County Supervisor" and "State Director" and adding in their place, the words "County Official" and "State Executive Director," respectively and by revising the heading of the exhibit and the first paragraph to read as follows:

Exhibit G of Subpart A—Worksheet for Accepting a Voluntary Conveyance of Farm Credit Program Security Property into Inventory

(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951-S for guidance in estimating the incomes and expenses to be used in this exhibit. The holding period to be used is 105 days (3.5 months).

* * * * *

7. Exhibit G-1 of subpart A is amended by removing the words "County Supervisor" and "State Director" and adding in their place the words "County Official" and "State Executive Director," respectively, and by revising the heading of the exhibit and the first paragraph to read as follows:

Exhibit G-1 of Subpart A—Worksheet for Determining Farm Credit Programs, Maximum Bid on Real Estate Property

(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951-S for guidance in estimating the incomes and expenses to be used in this exhibit. The holding period to be used is 105 days (3.5 months).

* * * * *

Subpart B—Management of Property

8. Section 1955.53 is amended by removing the definitions of "Leaseback/Buyback Property" and "Socially disadvantaged applicant" and by revising the definitions of "Suitable property" and "Surplus property" to read as follows:

§ 1955.53 Definitions:

* * * * *

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 also includes 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.

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.

9. Section 1955.63 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property can be used for program purposes. The suitability determination will be recorded in the running record of the case file.

(a) *Determination.* Property which secured loans or was acquired under the CONACT will be classified as suitable or surplus in accordance with the definitions for "suitable" and "surplus"

found in § 1955.53 of this subpart. For FSA property, the county committee will make this determination. For other agencies, this determination will be made by the State Director, or designee.

(b) *Grouping and subdividing farm properties larger than family-size.* The county official will subdivide farm properties larger than family-size whenever possible into parcels for the purpose of creating one or more suitable farm properties. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. Such land shall be subdivided into parcels of land the shape and size of which are suitable for farming, the value of which shall not exceed the direct farm ownership loan limit of \$200,000 or the guaranteed farm ownership loan limit of \$300,000. The county official may also group two or more individual properties into one or more suitable farm properties. The environmental effects will also be considered pursuant to subpart G of part 1940 of this chapter. Also refer to § 1955.140 of subpart C of this part.

* * * * *

10. Section 1955.66 is revised to read as follows:

§ 1955.66 Lease of real property.

When inventory real property, except for FSA and MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or the Agency on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart. The requirements of subpart G of part 1940 of this chapter will be met for all leases.

(a) *Authority to approve lease of property.* (1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of the Agency.

(2) *Inventory property.* Inventory property may be leased under the

following conditions. Except for farm property proposed for a lease under the Homestead Protection Program, any property that is listed or eligible for listing on the National Register of Historic Places may be leased only after the servicing official and the State Historic Preservation Officer determine that the lease will adequately ensure the property's condition and historic character.

(i) *SFH.* SFH inventory will generally not be leased; however, if unusual circumstances indicate leasing may be prudent, the county official is authorized to approve the lease.

(ii) *MFH.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with subpart C of part 1930 of this chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by a prior owner who was personally liable for a Farm Credit Programs loan must first be considered for Homestead Protection in accordance with subpart S of part 1951 of this chapter.

(B) Other than for Homestead Protection and except as provided in paragraph (c), the county official may only approve the lease of farm property to a beginning farmer or rancher who was selected through the random selection process to purchase the property but is not able to complete the purchase due to the lack of Agency funding.

(C) When the servicing official determines it is impossible to sell farm property after advertising the property for sale and negotiating with interested parties in accordance with § 1955.107 of subpart C of this part, farm property may be leased, upon the approval of the Administrator, on a case-by-case basis. This authority cannot be delegated. Any lease under this paragraph shall be for 1 year only, and not subject to renewal or extension. If the servicing official determines that the prospective lessee may be interested in purchasing the property, the lease may contain an option to purchase.

(D) When a lease with an option to purchase is signed, the lessee should be advised that FSA cannot make a

commitment to finance the purchase of the property.

(E) Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(F) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to conversion of wetlands to produce an agricultural commodity. See Exhibit M of subpart G of part 1940 of this chapter. All prospective lessees of inventory property will be notified in writing of the presence of highly erodible land, converted wetlands and wetland and other important resources such as threatened or endangered species. This notification will include a copy of the completed and signed Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetlands or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that the Agency's compliance requirements for wetlands, converted wetlands, and highly erodible lands are contained in Exhibit M of subpart G of part 1940 of this chapter. Additionally, a copy of the completed and signed Form SCS-CPA-26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form RD 1955-20, "Lease of Real Property," prohibiting the use of the property as specified above.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. A lease of utilities may require approval by State regulatory agencies.

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

(c) *Selection of lessees for FSA property.* FSA inventory property may only be leased to an eligible beginning

farmer or rancher who was selected to purchase the property through the random selection process in accordance with §1955.107(a)(2)(ii) of subpart C of this part. The applicant must have been able to demonstrate a feasible farm plan and Agency funds must have been unavailable at the time of the sale. Any applicant determined not to be a beginning farmer or rancher may request that the State Executive Director conduct an expedited review in accordance with §1955.107(a)(2)(ii) of subpart C of this part.

(d) *Property securing Farm Credit Programs loans located within an Indian Reservation.* (1) State Executive Directors will contact the Bureau of Indian Affairs Agency supervisor to determine the boundaries of Indian Reservations and Indian allotments.

(2) Not later than 90 days after acquiring a property, FSA will afford the Indian tribe having jurisdiction over the Indian reservation within which the inventory property is located an opportunity to purchase the property. The purchase shall be in accordance with the priority rights as follows:

(i) To a member of the Indian tribe that has jurisdiction over the reservation within which the real property is located;

(ii) To an Indian corporate entity;

(iii) To the Indian tribe.

(3) The Indian tribe having jurisdiction over the Indian reservation may revise the order of priority and may restrict the eligibility for purchase to:

(i) Persons who are members of such Indian tribe;

(ii) Indian corporate entities that are authorized by such Indian tribe to purchase lands within the boundaries of the reservation; or

(iii) The Indian tribe itself.

(4) If any individual, Indian corporate entity, or Indian tribe covered in paragraphs (d)(1) and (d)(2) of this section wishes to purchase the property, the county official must determine the prospective purchaser has the financial resources and management skills and experience that is sufficient to assure a reasonable prospect that the terms of the purchase agreement can be fulfilled.

(5) If the real property is not purchased by any individual, Indian corporate entity or Indian tribe pursuant to paragraphs (d)(1) and (d)(2) of this section and all appeals have concluded, the State Executive Director shall transfer the property to the Secretary of the Interior if they are agreeable. If present on the property being transferred, important resources will be protected as outlined in §§1955.137 and 1955.139 of subpart C of this part.

(6) Properties within a reservation formerly owned by entities and non-tribal members will be treated as regular inventory that is not located on an Indian Reservation and disposed of pursuant to this part.

(e) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). Inventory property will not be leased for a token amount.

(1) *Farm property.* To arrive at a market rent amount, the county official will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential. The income-producing capability of the property during the term of the lease must also be considered. This rental data will be maintained in an operational file as well as in the running records of case files for leased inventory properties. While cash rent is preferred, the lease of a farm on a crop-share basis may be approved if this is the customary method in the area. The lessee will market the crops, provide FSA with documented evidence of crop income, and pay the pro rata share of the income to FSA.

(2) *SFH property.* The lease amount will be the market rent unless the lessee is a potential program applicant, in which case the lease amount may be set at an amount approximating the monthly payment if a loan were made (reflecting payment assistance, if any) calculated on the basis of the price of the house and income of the lessee, plus $\frac{1}{2}$ of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will generally be leased for market rent for that type property in the area. However, such property may be leased for less than market rent with prior approval of the Administrator.

(f) *Property containing wetlands or located in a floodplain or mudslide hazard area.* Inventory property located in areas identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FSA, the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the

servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease. Property containing floodplains and wetlands will be leased subject to the same use restrictions as contained in § 1955.137(a)(1) of subpart C of this part.

(g) *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.

(h) *Lease of FSA property with option to purchase.* A beginning farmer or rancher lessee will be given an option to purchase farm property. Terms of the option will be set forth as part of the lease as a special stipulation.

(1) The lease payments will not be applied toward the purchase price.

(2) The purchase price (option price) will be the advertised sales price as determined by an appraisal prepared in accordance with subpart E of part 1922 of this chapter.

(3) For inventory properties leased to a beginning farmer or rancher applicant, the term of the lease shall be the earlier of:

(i) A period not to exceed 18 months from the date that the applicant was selected to purchase the inventory farm, or

(ii) The date that direct, guaranteed, credit sale or other Agency funds become available for the beginning farmer or rancher to close the sale.

(4) Indian tribes or tribal corporations which utilize the Indian Land Acquisition program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with subpart N of part 1823 of this chapter.

(i) *Costs.* The costs of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to subpart B of part 1924 of this chapter. Expenditures on custodial property as limited in § 1955.55 (c) (2) of this subpart will be charged to the borrower's account as recoverable costs.

(j) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the

leasing official may determine whether or not a security deposit will be required and the amount of the deposit.

(k) *Lease form*. Form RD 1955-20 approved by OGC will be used by the agency to lease property.

(l) *Lease income*. Lease proceeds will be remitted according to subpart B of part 1951 of this chapter.

(1) *Custodial property*. The proceeds from a lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense.

(2) *Inventory property*. The proceeds from a lease of inventory property will be applied to the lease account.

11. Exhibit B of subpart B is revised to read as follows.

Exhibit B—Notification of Tribe of Availability of Farm Property for Purchase

(To Be Used By Farm Service Agency to Notify Tribe)

From: County official

To: (Name of Tribe and address)

Subject: Availability of Farm Property for Purchase

[To be Used within 90 days of acquisition]

Recently the Farm Service Agency (FSA) acquired title to _____ acres of farm real property located within the boundaries of your Reservation. The previous owner of this property was _____. The property is available for purchase by persons who are members of your tribe, an Indian Corporate entity, or the tribe itself. Our regulations provide for those three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of categories. Following is a more detailed description of these categories:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase of Government inventory property and be able to carry on a family farming operation. Those persons not eligible for FSA's regular programs may also purchase this property as a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities. You may restrict eligible Indian corporate entities to those authorized by your Tribe to purchase lands within the boundaries of your Reservation. These entities also must meet the basic eligibility criteria established for the type of assistance granted.

3. The Tribe itself is also considered eligible to exercise their right to purchase the property. If available, Indian Land Acquisition funds may be used or the property financed as a Non-Program loan on ineligible rates and terms.

We are requesting that you notify the local FSA county office of your selection or intentions within 45 days of receipt of this letter, regarding the purchase of this real estate. If you have questions regarding eligibility for any of the groups mentioned

above, please contact our office. If the Tribe wishes to purchase the property, but is unable to do so at this time, contact with the FSA county office should be made.

Sincerely,

County official

Subpart C—Disposal of Inventory Property

12. Section 1955.102 is amended by revising the fifth sentence to read as follows:

§ 1955.102 Policy.

* * * 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. * * *

13. Section 1955.103 is amended by removing the number "15" and replacing it with the number "25" in the first sentence of paragraph (5) of the definition of "Beginning farmer or rancher," by removing the definitions for "Agricultural production unit," "Cropland," "Forage production area," "Leaseback/Buyback," "Leaseback/Buyback Property," "Marketable agricultural production unit comparable to that acquired," and "Previous operator," and by revising the definitions of "Suitable property" and "Surplus property" to read as follows:

§ 1955.103 Definitions.

* * * * *

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 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 programs with financing provided through that program.

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.

§ 1955.105 [Amended]

14. Section 1955.105 is amended by removing the words "Leaseback/Buyback and," removing the word "are" and replacing it with the word "is" in the last sentence of paragraph (a) and revising the reference "§1955.137(f)" to read "§1955.137(d)" in paragraph (d).

15. Section 1955.106 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1955.106 Disposition of farm property.

(a) *Rights of previous owner and notification*. Before property which secured a Farm Credit Programs loan is taken into inventory, the FSA county official will advise the borrower-owner of Homestead Protection rights (see subpart S of part 1951 of this chapter.)

* * * * *

(c) *Nonprogram (NP) borrowers*. Nonprogram (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.

16. Section 1955.107 is revised to read as follows:

§ 1955.107 Sale of FSA property (CONTACT).

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 advertisement should be conditional on that possibility. 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 a 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 or is terminated. There will be a preference for 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 farmer or rancher applicants that applications will be accepted pending completion of the advertisement process. When possible, the sale of suitable FSA property should be handled by county officials. 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 will be given to advertising inventory properties in major farm publications. Either Form

RD 1955-40 or Form RD 1955-41, "Notice of Sale," will be posted in a prominent place in the county. 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 governing bodies having jurisdiction over Indian reservations (see § 1955.103 of this subpart) shall be responsible for notifying those parties in § 1955.66(d)(2) of subpart B of this part.

(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 subpart E of part 1922 of this chapter. 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.

(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 75 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 of this subpart, as of the time of sale.

(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 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 in suspense pending sale to the successful applicant. The random selection drawing will be open to the

public, and applicants will be advised of the time and place.

(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 outcome of the random selection by lot is not appealable if such selection is conducted in accordance with this subpart.

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

(i) 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.

(ii) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(iii) 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.

(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.

(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, see Exhibit M of subpart G of part 1940 of this chapter. 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 of this subpart. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with § 1955.107 (a) of this subpart but has not sold within 75 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. All prospective buyers will be notified in writing as a part of the property advertisement of the presence of 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.

(1) *Advertising surplus property.* 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 the provisions or paragraph (a) of this section, within 75 days of the date of acquisition.

(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 105 days from the date of acquisition to the highest bidder. 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.

(3) *Negotiated sale.* If no acceptable bid is received through the sealed bid or auction process, the State Executive Director will sell surplus property at the maximum price obtainable without further public notice by negotiation with interested parties, including all previous bidders. The rates and terms offered for a credit sale through negotiation will be within the limitations established in paragraph (b) (4) of this section. A sale made through negotiation will require a bid deposit of not less than 10 percent 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. 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.

(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. The State Executive Director will determine the loan terms for surplus property within these limitations. 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.

17. Section 1955.108 is revised to read as follows:

§1955.108 Sale of (CONACT) property other than FSA property.

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 [Amended]

18. Section 1955.109 is amended by adding the word "FSA" before the word "applicants" in the second sentence of paragraph (a) and by removing the words "Farmer Credit Programs" and adding in their place the word "FSA" in the third sentence of paragraph (a).

§ 1955.122 [Amended]

19. Section 1955.122 is amended by removing paragraph (b) and redesignating paragraphs (c) through (g) as paragraphs (b) through (f), respectively.

§ 1955.130 [Amended]

20. Section 1955.130 is amended by adding the words "and surplus FSA" before "CONACT" in the heading and revising the reference "§ 1955.106" to read "§ 1955.107" in paragraph (c)(5), and revising the heading "Surplus CONACT" to read "Suitable and Surplus Non-FSA CONACT" and revising the reference "§ 1955.107" to read "§ 1955.108" in paragraph (c)(6).

21. Section 1955.137 is revised to read as follows:

§ 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). (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. Applicable restrictions will be incorporated into quitclaim deeds in a format similar to that contained in Exhibits H and I of RD Instruction 1955-C (available in any Agency office). A listing of all restrictions will be included in the notices required in paragraph (a)(2) of this section.

(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 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).

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and nonprogram (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, paragraph 3b (1) and (2) of Exhibit C of subpart G of part 1940.

(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. 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 or converted 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) of this section also apply, as does paragraph (a)(1) of this section 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:

(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 wetland 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.

(ii) After receiving the wetland determination from NRCS, the FSA county committee 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 primarily used for agricultural purposes including but not limited to such uses as cropland, pasture, hayland, orchards, vineyards and tree farming.

(iii) After the county committee has completed their 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 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.

(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 laws. 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.* (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 of this chapter for additional guidance.) 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 historical or archaeological importance; has apparent significant architectural features; or is similar to other Agency properties that have been determined to be eligible.

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

(2) 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.

(3) 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.

(4) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to a potential bidder or

purchaser through a notice procedure similar to that in §1955.13(a)(2) of this subpart.

(d) *Highly erodible farmland.* (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.

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

(3) Whenever NRCS technical assistance is requested in implementing these requirements and NRCS responds that it cannot provide such assistance within a time frame compatible with the proposed sale, the sale arrangements will go forward. The sale will proceed, conditioned on the requirement that a purchaser will immediately contact (NRCS) have a conservation plan developed and comply with this plan. 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.

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

(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.

(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.

22. Section 1955.139 is amended by revising the introductory text of paragraph (a)(3) and paragraph (c) to read as follows:

§1955.139 Disposition of real property rights and title to real property.

(a) * * *

(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) of this subpart do not apply.

* * * * *

(c) *Transfer of FSA inventory property for conservation purposes.* (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.

(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 is environmentally sensitive. This is land that meets any of the following criteria:

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

(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 (e.g., Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharges 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 or interest in 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 State or Federal agency requests title to inventory property, the State Executive 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 two public notices must be provided. These notices will be published in a newspaper with a wide circulation in the area in which the requested property is located. The notice will 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 comment period 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. All procedural requirements in paragraph (c) (3) of this section must be completed in 75 days.

(5) Determining priorities for transfer or inventory lands.

(i) A Federal entity will be selected over a State entity.

(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 purpose(s) for which the transfer would be established.

(6) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (e.g., Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to a 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.

(7) 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.

23. Section 1955.140 is revised to read as follows:

§1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property, other than Farm Credit 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 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental effects should also be considered pursuant to subpart G of part 1940 of this chapter. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. Subdivision of acquired property will be reported on Form RD 1955-3C, "Acquired Property—Subdivision," in accordance with the FMI.

(b) *Grouping of individual properties.* The county official for FCP 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.

24. Section 1955.148 is revised to read as follows:

§1955.148 Auction sales.

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 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 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 (available in any agency office). The bid deposit will be remitted only when the bidder defaults; otherwise it will be used at closing towards a down payment 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.

Dated: June 30, 1997.

James W. Schroeder,

Acting Under Secretary for Farm and Foreign Agricultural Services.

Dated: July 8, 1997.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 97-22004 Filed 8-20-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-73-AD; Amendment 39-10111; AD 97-17-08]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes (Formerly Known as Beech Aircraft Corporation Model 1900D Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Raytheon Aircraft Company (Raytheon) Model 1900D airplanes (formerly known as Beech Aircraft Corporation Model 1900D airplanes) that have not had the propeller removed and re-installed since factory installation. This action requires inspecting the propeller mounting bolts for the proper torque and replacing or re-torquing any propeller bolt with the wrong torque level. The manufacturer discovered some under-torqued propeller mounting bolts during factory installation of the propeller. The actions specified by this AD are intended to prevent fatigue cracking and failure of the propeller mounting bolts, which if not detected and corrected, could result in loss of the propeller.

DATES: Effective September 24, 1997.

Comments for inclusion in the rules docket must be received on or before October 30, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97-CE-73-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Raytheon Aircraft Company, 9709 E. Central, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97-CE-73-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209; telephone (316) 946-4145; facsimile (316) 946-4407.