

§ 1962.19

7 CFR Ch. XVIII (1-1-08 Edition)

the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by use of a letter similar to Guide Letter 1962-A-5.

(1) If the borrower makes restitution or provides sufficient information to enable the County Supervisor to post-approve the transaction on Form FmHA or its successor agency under Public Law 103-354 1962-1, no further action will be taken against the borrower. Post-approval can only be given under the conditions set out in 1962.17(b) of this subpart. Only one such transgression can be allowed in any period covered by the Form FmHA or its successor agency under Public Law 103-354 431-2, or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103-354, between annual security inspections, whichever is appropriate, and this must be made clear to the borrower.

(2) If the borrower does not make restitution, if the County Supervisor cannot post-approve the transaction, or if the borrower makes a second unauthorized disposition of security or a misuse of proceeds after settling the first offense as provided in paragraphs (a) and (b) of this section, the County Supervisor will proceed in accordance with §1962.49 of this subpart.

[54 FR 14791, Apr. 13, 1989]

§ 1962.19 Claims against Commodity Credit Corporation (CCC).

This section is based on a Memorandum of Understanding between CCC and FmHA or its successor agency under Public Law 103-354 (see Exhibit A of this subpart). The memorandum sets forth the procedure to follow when producers sell or pledge to CCC as loan collateral under the Price Support Program, commodities on which FmHA or its successor agency under Public Law 103-354 holds a prior lien, and when the proceeds, or an agreed amount from them, are not remitted to FmHA or its successor agency under Public Law 103-354 to apply against the producer's indebtedness to FmHA or its successor agency under Public Law 103-354. In addition to the procedures outlined in Exhibit A, the following apply:

(a) *County Office action.* (1) Claims will not be filed with CCC until it is determined that the amount involved cannot be collected from the borrower. Therefore, after preliminary notice is given of this fact to CCC by the State Director, the County Supervisor will make immediate demand on the borrower for the amount of the CCC loan or the portion of it which should have been applied to the borrower's account. If payment is made, the State Director will be notified.

(i) If payment is not made, the County Supervisor will determine whether or not the case should be liquidated in accordance with §1962.40 of this subpart. Any liquidation action will be taken immediately. If the borrower has no property from which recovery can be made through liquidation or, if after liquidation, an unpaid balance remains on the indebtedness secured by the commodity pledged or sold to CCC, the County Supervisor will make a full report to the State Director on Form FmHA or its successor agency under Public Law 103-354 455-1, "Request for Legal Action," with a recommendation that a claim be filed against CCC. However, if the indebtedness is paid through liquidation action, the State Director will be notified by memorandum.

(ii) If the facts do not warrant liquidation action, the State Director will be notified, and a recommendation will be made that no claim be filed against CCC.

(2) On receiving information from the State Director that CCC has called the borrower's loan, the County Supervisor will act to protect FmHA or its successor agency under Public Law 103-354's interest with respect to the commodity if CCC is repaid.

(b) *State Office action.* (1) The State Director, on receipt of reports and recommendations from the County Supervisor, will:

(i) If in agreement with the County Supervisor's recommendation not to file a claim against CCC or if notice is received that the indebtedness has been paid, forward notice to CCC.

(ii) If in agreement with the County Supervisor's recommendation to file a claim against CCC, refer the case to OGC with a statement of facts.

(iii) If OGC determines that FmHA or its successor agency under Public Law 103-354 holds a prior lien on the commodity and the amount due on its loan is not collectible from the borrower, send CCC a copy of the OGC memorandum with a complete statement of facts supporting the claim through the applicable ASCS office or notify CCC if the OGC memorandum does not support FmHA or its successor agency under Public Law 103-354's claim.

(2) The State Director will notify the County Supervisor promptly on receiving information from CCC that the borrower's loan is being called.

(3) If collection cannot be made from the borrower or other party (see paragraph 5 of Exhibit A of this Subpart), the State Director will give CCC the reasons, FmHA or its successor agency under Public Law 103-354 will then be paid by CCC through the applicable ASCS office.

§§ 1962.20-1952.25 [Reserved]

§ 1962.26 Correcting errors in security instruments.

The County Supervisor may use Form FMHA 462-12, to correct minor errors in a financing statement when the errors are not serious (i.e., a slightly misspelled name). OGC will be asked to determine whether or not such errors are in fact minor. The County Supervisor may also use Form FmHA or its successor agency under Public Law 103-354 462-12 to add chattel property to the financing statement (i.e., a new type or item of chattel or crops on land not previously described).

§ 1962.27 Termination or satisfaction of chattel security instruments.

(a) *Conditions.* The County Supervisor may terminate financing statements and satisfy chattel mortgages, chattel deeds of trust, assignments, severance agreements and other security instruments when:

(1) Payment in full of all debts secured by collateral covered by the security instruments has been received; or

(2) All security has been liquidated or released and the proceeds properly accounted for, including collection or settlement of all claims against third

party converters of security, even though the secured debts are not paid in full. This includes collection-only and debt settlement cases; or

(3) The U.S. Attorney has accepted a compromise offer in full settlement of the indebtedness and has asked that action be taken to satisfy or terminate such instruments; or

(4) FmHA or its successor agency under Public Law 103-354 has a financing statement or other lien instrument which describes the real estate upon which crops are located but neither the borrower nor FmHA or its successor agency under Public Law 103-354 has an interest in the crops because the borrower no longer occupies or farms the premises described in the lien instrument. Such action will only relate to the crops.

(b) *Form of payment.* (1) Security instruments may be satisfied or the financing statements may be terminated on receipt of final payment in currency, coin, U.S. Treasury check, cashier's or certified check, bank draft, postal or bank money order, or a check issued by a party known to be financially responsible.

(2) When the final payment is tendered in a form other than those mentioned above, the security instruments will not be satisfied until 15 days after the date of the final payment. However, in UCC States the termination statement will be signed and sent to the borrower within 10 days after receipt of the borrower's written request but not until the 10th day unless it previously has been ascertained that the payment check or other instrument has been paid by the bank on which it was drawn. (See subsection (c) of this section for the reason for the 10-day requirement.)

(c) *Filing or recording termination statements.* Financing statements will be terminated by use of Form FmHA or its successor agency under Public Law 103-354 462-12 if provided by a State supplement. (1) Under UCC provisions if FmHA or its successor agency under Public Law 103-354 fails to give a termination statement to the borrower within 10 days after written demand, it will be liable to the borrower for \$100 and, in addition, for any loss caused to the borrower by such failure unless