Rules and Regulations

Federal Register

Vol. 71, No. 149

Thursday, August 3, 2006

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AH07

Guaranteed Loans—Retaining PLP Status and Payment of Interest Accrued During Bankruptcy and Redemption Rights Periods

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations pertaining to the retention of Preferred Lender Program (PLP) status by lenders in certain situations, and the payment of interest in cases where the lender is unable to take action due to bankruptcy or state redemption laws. This rule will allow PLP lenders, under certain conditions, to retain their PLP status for a period, not to exceed two years, after their loss ratio exceeds the standard established by the Agency. It will also allow for the payment of additional interest on a final loss claim if a bankruptcy prevents the lender from taking liquidation action or a state's mandatory redemption law prevents the lender from disposing of property acquired through foreclosure.

DATES: *Effective Date:* September 5, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph Pruss, Senior Loan Officer, Farm Service Agency; telephone: (202) 690–2854; facsimile: (202) 690–1196; e-mail: *Joseph.Pruss@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

FSA published a proposed rule on August 15, 2005, (70 FR 47730–47733) to amend its regulations governing the servicing of loans made under the guaranteed farm loan program. The comment period ended October 14, 2005.

Summary of Public Comments

All of the issues related to the proposed rule were commented on. FSA considered the comments and incorporated some of the recommendations and suggestions in this rule. Following is a review of the comments and the changes made in the final rule in response to the comments.

Retaining PLP Status

Six comments were received regarding the proposal to amend 7 CFR 762.106(g)(2)(ii). The proposal would recognize additional situations where a PLP lender could be allowed to retain their status as a PLP lender if, due to circumstances beyond their control they no longer met the eligibility requirements concerning loss ratios. All of the commenters were in favor of the proposal, with one specifically mentioning that the current regulation is inadequate without any change. One comment suggested that the Agency should enlarge the maximum period of waiver from one year to three years, subject to earlier revocation by the Agency if the lender was not making progress toward meeting the requirements of its approved loss reduction plan. Another commenter favored the extension of the one year period only in cases of extreme disasters. One commenter also suggested that the decision on whether or not the extension was to be granted should be made administratively final, since it is subjective and could subject the Agency to appeals and litigation.

In consideration of the comments received, the Agency is making changes in the final rule. Because recovery from disasters can take several years to accomplish, the Agency is going to extend the time period for which an exception can be granted from one year to two years. Past experience shows that one year is an inadequate amount of time to fully recover.

Present regulations allow the Agency to grant a waiver to PLP lenders to allow them to retain their PLP status when they exceed the maximum loss ratio, currently set at three percent, but only under natural disasters that are widespread enough to be declared a disaster. There are many other reasons that are totally beyond the control of the lender that could cause a lender's loss ratio to exceed three percent, even if the lender normally does an outstanding job in making and servicing loans guaranteed by the Agency. Some of the possibilities could include an untimely freeze of only local impact, an economic downturn in a local area, or perhaps very low commodity prices for a specialty crop only grown in one or two localities. Land values could drop drastically in a local area only, possibly due to industry moving in or out of an area, loss of access to markets, or biological or chemical damage that is not widespread, but negatively affects a small area. A limited area may experience localized flooding due to locally severe thunderstorms, or a large amount of hail in a small area.

Smaller banks that make and service loans in a local area only are more likely to incur losses above the three percent maximum loss ratio because all of their portfolio is concentrated in a small area and the volume of their portfolio is such that as little as one or two loans incurring large loss claims could cause their loss ratio to go up greatly. Larger lenders with loans spread out over a large area would not suffer as greatly and it would take more losses before they would reach the maximum loss limit. Whether a large or small lender, either one would suffer the loss for reasons totally beyond their control.

PLP Lenders who exceed the maximum loss ratio and want to retain their status will contact their FSA State Office and explain why they believe their excessive losses are beyond their control. They will be required to develop a plan to reduce their losses below the three percent loss ratio, the current maximum allowed by regulations to retain PLP status. If the FSA State Office determines there is adequate justification for allowing the lender to retain PLP status, the State Office will make their recommendation and send an exception request to the Deputy Administrator of Farm Loan Programs, who will make the final decision on granting the exception. If the State Office determines that an exception is not justified, they will decline to send a request for an exception. If granted, the exception may be renewed at the end of the two year period for another two year period if the lender is making satisfactory progress toward reducing their loss ratio below the standard, currently set at three percent. No further renewals or extensions would be granted.

The Deputy Administrator for Farm Loan Programs would not automatically grant the request for retention of PLP status. A careful analysis would be performed on the information provided by the lender and the State Office of the Agency. A comparison would be made with loss ratios of other lenders in the same area. If there are several local lenders, and only one is experiencing excessive loss claims, the request would be denied, unless there were other extenuating circumstances that would justify the request.

The Agency does not adopt the suggestion that the decision on granting an exception be administratively final in order to avoid appeals. The Agency anticipates that such exceptions rarely will be made, and any denials will be upheld in an appeal.

Interest Accrual on Loan Liquidations

Nine comments were received on this subject; all were supportive of the proposal, and saw it as a good start, but some believe it does not go far enough. One mentioned that they appreciated that FSA is responding to the concerns of the commercial lenders on the issue of interest accrual in Chapter 7 bankruptcies and in redemption rights cases. Several commenters believed the Agency should relax its requirements further than proposed, to pay interest for a longer period. These comments stated that while 45 days is enough time to liquidate chattel security, 45 days in some cases is not enough time to liquidate real estate.

In response to these comments, the Agency will pay interest on the unsecured amount for up to 90 days, instead of the 45 days originally proposed, after the earlier of the relief from stay or discharge of the Chapter 7 bankruptcy for real estate secured loans. The Agency still believes that, when the security is chattels, paying interest on the unsecured amount for up to 45 days after the earlier of the relief from stay or discharge of the Chapter 7 bankruptcy is adequate. Forty five days is generally enough time to accomplish liquidation after the relief from stay or discharge since, for chattels there should be few legal impediments; however, this amount of time often is inadequate when real estate serves as collateral. That is because lenders are typically unable to liquidate real estate in the same timeframe as chattels. Thus, the Agency has amended this final rule accordingly.

One comment indicated that the Agency was establishing the date of filing a Chapter 7 bankruptcy as the date from which the 90 day time limit on interest was to be paid. That, in fact, is already the current policy of FSA, and the revision is simply stating this more clearly in § 762.148 in order to reduce confusion.

Another suggestion was that the time period should be based on the unique circumstances of each case, and suggested that Farm Credit is at a disadvantage because they are required to offer a right of first refusal in all states, regardless of whether or not redemption rights apply. Establishing an indefinite period of time to pay interest based on the particulars of each case would not be appropriate, as lenders would not all be treated equally, so the Agency does not adopt this comment.

The suggestion also was made that the additional interest should apply to the entire amount of the debt and not just the unsecured portion. The Agency does not adopt this comment as the process of the estimated loss claim allows the lender to receive immediate compensation upon which they can invest to offset any earnings reductions.

Another commenter assumed that the filing of Chapter 7 bankruptcy would serve as the lender's liquidation plan. This is not the case. Lenders shall continue to follow those existing regulations at 7 CFR 762.149(b). This section makes very clear the requirements a lender must follow in developing a liquidation plan, including timeframes and submission requirements to the Agency. A lender is still required to appraise the collateral, determine the method to obtain the greatest return, and submit an estimated loss claim if liquidation cannot be completed within 90 days.

Other comments were that the Agency should use some other date for starting the 90 day clock, such as the date the bankruptcy is closed, when the trustee abandons the security, or the date of discharge. The Agency carefully considered these comments, but believes using the date of filing for Chapter 7 bankruptcy as the date of the decision to liquidate is most reasonable as previously explained. When a borrower files for a Chapter 7 bankruptcy, the lender can immediately submit an estimated loss claim, even with incomplete information concerning the collateral. There is limited justification in using the date the bankruptcy is closed, when the trustee abandons the security, or the date of discharge, as the starting date of the 90 day interest accrual the Agency will pay, because there is no reason a lender cannot file an estimated loss claim upon notification of the borrower filing for a Chapter 7 Bankruptcy.

The proposal to pay additional interest on the amount that was estimated to be secured but was eventually found to be unsecured removes the penalty that a lender effectively receives for underestimating their loss under existing regulations. This rule will encourage the lender to file an estimated loss claim since the lender will be paid additional interest on any unsecured debt remaining only if the lender filed an estimated loss claim. Thus the lender will not lose interest due to an inaccurate estimated loss claim.

Another commenter suggested that the Agency include Chapter 11 bankruptcies along with Chapter 7 bankruptcies in the proposal to pay additional interest. The existing regulations concerning Chapter 11 bankruptcies are adequate to cover those situations, so no changes will be made in response to this comment.

Another comment was that the Agency should put some reasonable caps on default interest rates and attorney fees that lenders charge. The Agency has no authority to establish maximum default interest rates. Default interest rates are often spelled out in the promissory note and, by signing promissory notes, borrowers agree to the default interest rate. The Agency is not involved in negotiating loan terms between lenders and their customers beyond the term limits imposed for guaranteed loan origination and rescheduling, and no change will be made in response to the comment. In addition, the Agency does not cover default interest as part of any loss claims.

As for the comment suggesting a particular limitation on attorney fees, the Agency has no authority to establish what reasonable legal fees are. The Agency does often negotiate with lenders to reduce loss claims that include attorney fees that seem unreasonable in a particular case. Explicitly stating in the regulation what is reasonable, is not necessary or appropriate and no change will be made in response to the comment.

Several comments were received which addressed the proposed payment of interest in cases where state redemption rights apply. Commenters generally combined comments concerning interest where state redemption rights apply with the comments on Chapter 7 Bankruptcy. No commenter was opposed to the proposal, but, just as in the case of Chapter 7 bankruptcies, several thought the 45 day proposal was inadequate in some cases, and should be longer. The Agency agrees with the suggestions and amending the final regulation to allow for the payment of interest for a period of up to 90 days after the end of the redemption period for real estate secured loans.

One commenter suggested that there has been an increasing marginalization of borrowers in the program in recent years, and objects to the use of the language that identifies lenders as the Agency's customers. The guaranteed loan program was created to make credit available to farmers and ranchers who may not have credit available to them. This is accomplished by providing a guarantee to a commercial lender to reduce most of their risk of loss on the loan they make to the farmer/rancher. The loans guaranteed are those that the lender would not have made without a guarantee. Thus, farmers and ranchers are ultimate beneficiaries of the program by being able to obtain credit, or credit at competitive rates and better terms. In making and servicing guaranteed loans, no direct contact between the farmer and the Agency is required; the Agency conducts its program by dealing with the lenders. For guaranteed loans, the farm borrowers make application to, and are customers of the lender. The lender makes application to the Agency for the guarantee, and thus is the customer of the Agency. No changes were made to the rule as a result of this comment.

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities, because it does not require any specific actions on the part of the borrower or the lenders. The Agency made this certification in the proposed rule and no comments were received in this area. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601).

Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 1940, subpart G. FSA concluded that the rule does not require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (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 except that lender servicing under this rule will apply to loans guaranteed prior to the effective date of the rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

This rule contains no Federal mandates, as defined by title II of Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance: 10.406 Farm Operating Loans; 10.407 Farm Ownership Loans.

List of Subjects in 7 CFR Part 762

Agriculture, Banks, Credit, Loan programs—agriculture.

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

PART 762—GUARANTEED FARM LOANS

■ 1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 2. Amend § 762.106 by revising paragraph (g)(2)(ii) to read as follows:

§ 762.106 Preferred and certified lender programs.

* * * * *

(g) * * *

(2) * * *

(ii) Failure to maintain PLP or CLP eligibility criteria. The Agency may allow a PLP lender with a loss rate which exceeds the maximum PLP loss rate, to retain its PLP status for a two-year period, if:

(A) The lender documents in writing why the excessive loss rate is beyond their control;

(B) The lender provides a written plan that will reduce the loss rate to the PLP maximum rate within two years from the date of the plan, and

(C) The Agency determines that exceeding the maximum PLP loss rate standard was beyond the control of the lender. Examples include, but are not limited to, a freeze with only local impact, economic downturn in a local area, drop in local land values, industries moving into or out of an area, loss of access to a market, and biological or chemical damage.

(D) The Agency will revoke PLP status if the maximum PLP loss rate is not met at the end of the two-year period, unless a second two year extension is granted under this subsection.

* * * * *

■ 3. Amend § 762.148(d)(1) by adding a sentence to the end of the paragraph to read as follows:

§ 762.148 Bankruptcy.

* * * * *

(d) * * *

(1) * * * For purposes of calculating the time frames required under § 762.149 of this part, for a borrower who is or will be liquidated, the date the borrower files for bankruptcy protection under Chapter 7 shall be the date of the decision to liquidate.

* * * * *

■ 4. Amend § 762.149 by revising paragraph (d)(2) to read as follows:

§ 762.149 Liquidation.

* * * * *

(d) * * *

(2) The lender generally will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. The following exceptions apply:

(i) If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease 90 days after the decision to liquidate,

(ii) In the case of a Chapter 7 bankruptcy, in cases where the lender filed an estimated loss claim, the Agency will pay the lender interest which accrues during and up to 45 days after the date of discharge on the portion of the chattel only secured debt that was estimated to be secured but upon final liquidation was found to be unsecured, and up to 90 days after the date of discharge on the portion of real estate secured debt that was estimated to be secured but was found to be unsecured upon final disposition,

(iii) The Agency will pay the lender interest which accrues during and up to 90 days after the time period the lender is unable to dispose of acquired property due to state imposed redemption rights on any unsecured portion of the loan during the redemption period, if an estimated loss claim was paid by the Agency during the liquidation action.

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Signed at Washington, DC, on July 18, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–12503 Filed 8–2–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 03–033F; FDMS Docket Number FSIS–2005–0026]

RIN 0583–AD08

Frequency of Foreign Inspection System Supervisory Visits to Certified Foreign Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) FSIS is amending 9 CFR parts 327 and 381 to bring the frequency with which foreign inspection systems are required to make supervisory visits to certified establishments into agreement with the frequency with which the Agency makes supervisory visits to domestic establishments. This final rule does not affect in-plant inspection requirements. FSIS is deleting the requirement that supervisory visits take place ‘‘not less frequent[ly] than one such visit per month.’’ Instead, FSIS will require foreign inspection systems to make ‘‘periodic supervisory visits’’ to certified establishments to ensure that establishments meet FSIS requirements for certification to export meat and poultry to the United States.

DATES: *Effective Date:* September 5, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, FSIS Office of International Affairs; (202) 720–6400; *sally.white@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2004, FSIS published a proposal in the **Federal Register** (69 FR 51194–51196) to amend 9 CFR 327.2(a)(2)(iv)(A) and 9 CFR 381.196(a)(2)(iv)(A) to provide that supervisory visits by a representative of the foreign inspection system are to occur at periodic intervals to ensure that establishments and products meet the requirements for certification to the United States on an ongoing basis. This change would make the Agency's requirements for foreign inspection programs as consistent as possible with the FSIS domestic inspection program. It would also allow foreign countries flexibility in structuring their programs.

Upon the effective date of this final rule, FSIS will send an official letter to each eligible country announcing: The change from the monthly requirement and requesting, in writing, formal notice of the eligible country's projected frequency of supervisory visits; an explanation of why the proposed frequency will ensure that the eligible country's system produces safe, wholesome, unadulterated, and properly labeled and packaged product on an ongoing basis; and an explanation of how the system will ensure that any immediate need for supervisory intervention will be recognized and met. The frequency of periodic supervisory visits will be evaluated for adequacy by FSIS through its annual audit process, in which the ongoing eligibility of an exporting country is reviewed.

Comments

FSIS received four comments on the proposed rule. One comment supported the proposal. Three comments raised concerns, with one calling for the proposal to be withdrawn. The concerns expressed in these three comments are summarized and answered below.

Equivalence With U.S. Domestic Inspection System Culture

Two comments noted that FSIS has stated that there are continual contacts between its inspectors in domestic plants and supervisors through means other than personal visits and questioned whether such intensive interaction exists within exporting countries that would no longer be held to monthly supervisory visits.

FSIS Response

The Agency notes that the inspection system of a country requesting eligibility to export meat and poultry products to the United States is thoroughly investigated during the equivalence evaluation process described at length in the proposal to this final rule. A key part of the evaluation is an assessment of in-plant implementation of inspection system procedures, which includes an examination of the appropriate level of supervisory oversight for certified establishments. An applying country must demonstrate that its inspection system, as implemented, includes features equivalent to those of the U.S. system before the country can be found equivalent.

As stated above, upon the effective date of this final rule, FSIS will send an official letter to each eligible country announcing the change from the monthly requirement. FSIS will request formal notice in writing of the eligible country's projected frequency of supervisory visits and an explanation of why the proposed frequency will ensure that the eligible country's system produces safe and wholesome product on an ongoing basis. Each eligible country will also be asked to describe, in writing, how its system will ensure that any immediate need for supervisory intervention will be recognized and met. The frequency of periodic supervisory visits will be evaluated for adequacy by FSIS in its annual audits reviewing the ongoing eligibility of an exporting country.

Equivalence With Domestic State Inspection Systems

Another comment noted that the 28 State inspection systems are required to be ‘‘at least equal to’’ the Federal inspection system, and that many federally-inspected plants have reported supervisory visits more frequently than the monthly requirement that will be eliminated for eligible exporting countries by the final rule.