Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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: Proposed rule.

SUMMARY: This action proposes several amendments to the regulations governing the Farm Service Agency (FSA) guaranteed farm loan program. First, this rule proposes to allow Preferred Lender Program (PLP) lenders, under certain conditions, to retain their PLP status for a period not to exceed one year after their loss ratio exceeds the standard established by the Agency, currently set at three percent. Secondly, FSA proposes to pay lenders 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. The changes proposed are intended to improve the services the Agency provides to its customers.

DATES: Comments concerning this proposed rule must be submitted by October 14, 2005 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments should reference the volume, date and page number of this issue of the **Federal Register**. Comments may be submitted by any of the following methods:

E-Mail: Send comments to *Joseph.Pruss@usda.gov.*

Fax: Submit comments by facsimile transmission to (202) 690–1196.

Mail: Submit comments to Branch Chief, Guaranteed Loan Servicing and Inventory Property Branch, Loan Servicing and Property Management Division, FSA, USDA, 1400 Independence Avenue, STOP 0523, Washington, DC 20250–0523.

Hand Delivery or Courier: USDA FSA DAFLP LSPMD, Suite 500, 1250 Maryland Avenue, SW., Washington, DC 20024.

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

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:

Discussion of the Proposed Rule

This rule proposes changes to the FSA guaranteed farm loan program. FSA guaranteed loans provide conventional agricultural lenders with up to a 95 percent guarantee of the principal loan amount, and accrued interest. The lender is responsible for servicing a borrower's account for the life of the loan. All loans must meet certain qualifying criteria to be eligible for guarantees, and FSA has the right and responsibility to monitor the lender's servicing activities. Farmers interested in these loans must apply to a conventional lender, which then arranges for the FSA guarantee. When a farmer does not fully repay the loan from the lender that FSA guaranteed, the lender will submit a formal request to the Agency for payment of the guaranteed percentage of the unpaid debt. This rule proposes changes to provisions that govern such loss claims and related loan servicing issues.

Retaining PLP status

The first change proposed is to amend 7 CFR 762.106(g)(2)(ii) regarding the revocation of PLP status for failure to maintain eligibility, specifically with regard to the maximum loss percentage. The status of ''preferred lender'' is awarded by FSA to lenders with demonstrated expertise in agricultural lending and experience with the FSA Guaranteed Loan Program. This section, in part, requires that PLP lenders maintain eligibility established in 7 CFR 762.106(c)(4) governing the losses that a PLP lender may have incurred, currently three percent for loans made in the previous 7 years. The amendment will allow a PLP lender to maintain its status as a PLP lender for up to one year after its loss ratio exceeds, for reasons explained below which are beyond its control, the maximum allowable PLP loss rate. Lenders would be required to explain the reason their loss rate exceeds the allowable limit, and develop and implement a plan to reduce the loss rate below the allowable limit within the one year period. A lender that does not submit such a request to retain their PLP status for the one-year period, will not retain their status as a PLP lender. The proposed waiver will not apply to Certified Lenders, because their loss criteria is already generous compared to the requirements for PLP lenders.

This amendment also would broaden the conditions under which FSA may grant a waiver to existing PLP lenders for exceeding the maximum loss ratio. Present regulations at 7 CFR 762.106(c)(4) provide that the Agency may waive the maximum PLP loss ratio if the applicable lender's loss rate was substantially affected by a disaster (such as storms, earthquakes, drought, flooding, and freezes) as defined in 7 CFR part 1945, subpart A. This provision only covers natural disasters that are widespread enough to be declared a disaster. Conditions, such as a freeze with only local impact, may not be declared a disaster but may cause excessive losses for one or two lenders in a community. Further, lender loss ratios may be affected by an unforeseeable economic downturn, drops in land value, industry moving into or out of an area, a loss of access to a market, biological or chemical damage, or other circumstances beyond the lender's control. Such one-occasion losses may have an inordinate affect on a lender in that local area, or a lender with a concentration of loans to producers of a commodity suffering localized reduction in production and market prices. The proposal would allow the Agency more flexibility in granting a waiver to an existing PLP lender for exceeding the maximum loss ratio for reasons beyond their control. A lender requesting a 1-year waiver of the maximum loss ratio must provide a satisfactory explanation of why it's losses suddenly increased, and a realistic plan detailing the actions they plan to take to reduce their loss ratio to the requisite level. Whether losses could

have been controlled by the lender and whether a plan for loss reduction is acceptable will be determined in each case by FSA. If the Agency grants a 1-year waiver, and the lender's loss ratio does not meet the maximum PLP loss ratio at the end of the 1-year period, the lender's PLP status will be revoked.

Interest Accrual on Loan Liquidations

FSA also proposes to amend the amount of interest accrual that the Agency will pay lenders on loss claims. Specifically, this rule proposes changes to the way loss claims are handled when liquidation is delayed by a Chapter 7 bankruptcy filing, a Chapter 7 bankruptcy results in a lower estimated loss claim due to an over-estimation of security value, or where a mandatory state right of redemption prevents a lender from disposing of property acquired through foreclosure.

Loss claims in case of a Chapter 7 bankruptcy. This rule proposes to amend 7 CFR 762.148(d)(1) to clarify that, in Chapter 7 bankruptcy cases, the date of the decision to liquidate, for the purposes of calculating total interest due on a final loss claim under § 762.149, is the date the borrower files for Chapter 7 bankruptcy. This will preclude any misunderstanding as to the date beyond which the Agency will not pay accruing interest. Currently, 7 CFR 762.148(d)(1) requires the lender with such a borrower who to proceed under section 762.149 and submit a liquidation plan and estimated loss claim within 30 days of the decision to liquidate, if liquidation is expected to exceed 90 days. That policy exists because collateral or property mortgaged for a debt discharged under Chapter 7 of the Bankruptcy Code is subject to repossession or sale by the secured creditor. Thus, a Chapter 7 discharge of an FSA guaranteed farm loan typically results in sale of the security for the guaranteed loan. Although the decision to liquidate is not actually made by the lender, as is commonly the case where defaults cannot be cured and the borrower does not file for bankruptcy, the bankruptcy petition of the borrower is, in effect, a ''decision to liquidate.''

The Agency also is proposing to amend § 762.149 so that in the case of a Chapter 7 bankruptcy, a lender will not be penalized for submitting an estimated loss claim that later proves to be underestimated, based on the final loss claim. The estimated loss claim submitted with the liquidation plan is calculated based on the remaining principal and interest of the loan, less the estimated value of the remaining security for the loan. In a bankruptcy case, lenders often lack reliable information regarding the value of the remaining collateral, their appraisals are outdated, and the bankruptcy schedules may not yet be available for the lenders to use for a liquidation plan and estimated loss claim. Also, when the borrower files bankruptcy the borrower and lender are often in an adverse relationship and the lender cannot inspect or accurately evaluate the security property. Other problems may cause the estimated claim in a Chapter 7 case to vary from the final claim, such as depreciation, missing security property, or an inaccurate estimate of the time required to complete liquidation. Thus, at the time of the bankruptcy filing and submission of the estimated loss claim, the lender's valuation of its remaining loan security may be far from what the liquidation sale actually brings. Regardless, for purposes of calculating final loss claims, present Agency regulations allow no further interest on the loan after payment of the estimated loss claim. Therefore, this rule proposes that 7 CFR 762.149(d)(2) be amended to provide that a lender receive the guaranteed percentage of the interest that accrued on the amount that had been estimated to be secure, but upon final disposition of collateral was found to be unsecured. Interest will not be paid on the amount estimated to be unsecured, and will not be paid if the lender did not submit an estimated loss claim within the established timeframe. The Agency proposes to pay the additional interest up to a maximum of 45 days after the earlier of the relief from stay, or discharge of the Chapter 7 Bankruptcy. This is a reasonable period of time for a lender to accomplish liquidation after the relief from stay or discharge.

Redemption rights. This rule proposes that lenders will be paid the guaranteed portion of interest that accrues during a redemption period on the additional unsecured debt if the lender submitted an estimated loss claim as required. State right of redemption statutes provide the former owner of the property, and, in some states, parties with any interest in the property such as subordinate lien holders, with a time period, typically six months to one year, during which they may redeem the property by paying the obligations secured by it. Numerous states provide that redemption rights continue after foreclosure proceedings. Therefore, these rights may frustrate creditors, including FSA guaranteed lenders, when they are attempting to enforce their liens on mortgaged property. A creditor who submits successful bids at foreclosure sales cannot get a clear deed to the property until the debtor's redemption period has passed. Such lenders cannot convey clear title to a buyer, and if they do sell it, the final sales price could be depressed because of the uncertainty of the finality of the transaction. Further, any successful bidder at a foreclosure sale in a state with a redemption period cannot take title to the property until the end of the redemption period. A winning bidder who improves the property, such as erecting buildings or fences, risks losing his or her investment if the former owner ''redeems'' it and retains title by paying the redemption amount. This discourages bidding on property and may reduce the amount potential purchasers are willing to bid. For this reason, lenders rarely sell properties prior to the expiration of the redemption period. Many factors beyond the lender's control, such as actions of the former owner, economic conditions, and even the weather may affect the real estate value during the redemption period. Currently, FSA loss claim regulation, 7 CFR 762.149, prohibits paying the lender interest that accrues beyond 90 days from the date of the decision to liquidate. However, borrower redemption rights are circumstances beyond the lender's control, and the Agency has determined that the lender is entitled to the guaranteed portion of the interest that accrues during the redemption period on the additional portion of the loan that is unsecured. The Agency is proposing to pay the additional interest during the time of the redemption period, plus up to an additional 45 days, which is considered sufficient time for the lender to dispose of the property.

There will be some additional cost to the Agency for the above proposed changes, but based on an analysis of losses paid during fiscal years 2002 through 2004, the total costs to the Agency should be minimal. The analysis indicated that the proposals will result in an increase of only one-sixth of one percent of the amount currently paid in loss claims.

Executive Order 12866

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

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule does not require any specific actions on the part of the subject program's borrowers or lenders, except for a PLP lender that is

requesting the Agency to grant an exception to the loss rate criteria, to allow them to retain their PLP status for a year while they attempt to reduce their loss ratio to an acceptable level. In the six year period since the Agency has been granting PLP status, an average of less than one lender a year has had their status removed due to their loss ratio exceeding the established standard. When a PLP lender decides to request that their PLP status be maintained for an additional year, the Agency anticipates that request will require minimal submission of information, no more than a page or two of narrative explaining why their loss rate is high, and their plans to bring it down, further justifying the conclusion that a Regulatory Flexibility Analysis is not required. The Agency, therefore, concludes that it 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 proposed 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 regulation for compliance with NEPA, 7 CFR part 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would 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 to the extent permitted by existing contracts; 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, 7 CFR part 762 is proposed to be 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, however, may allow a PLP lender with a loss rate which exceeds the maximum PLP loss rate, as provided by the Agency periodically in a **Federal Register** notice, to retain its PLP status if:

(A) 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);

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

(C) The lender provides a written plan that will reduce the loss rate to the PLP maximum rate within one year from the date of the plan. PLP status will be revoked if the maximum PLP loss rate is not met at the end of the one year grace period.

* * * * *

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, 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. 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. However, in the case of a Chapter 7 bankruptcy, 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 debt that was estimated to be secured but was found to be unsecured upon final disposition, in cases where the lender filed an estimated loss claim. The Agency also will pay the lender interest which accrues during and up to 45 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 timely filed during the liquidation action.

* * * * *

Signed at Washington, DC, on July 22, 2005.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 05–16107 Filed 8–12–05; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL TRADE COMMISSION

16 CFR Part 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to the premerger notification rules (''the rules'') to enable filing parties to provide Internet links to certain documents in lieu of paper copies, and to address ''stale filing'' situations, in which parties make premerger notification filings but then fail to comply with a Request for Additional Information and Documentary Material (''second request''). Section 7A of the Clayton Act (''the Act'') requires the parties to certain mergers and acquisitions to file notification with the Federal Trade Commission (''the Commission'' or ''FTC'') and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'' or ''DOJ'') and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in Federal court to prevent consummation. If either agency determines during the waiting period that further inquiry is necessary, it can issue a second request, which extends the waiting period for a specified period after all parties have complied with the request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies). The Commission is proposing a change to relieve the burden of complying with Items 4(a) and (b) of the Notification and Report Form (''the Form''). Currently, paper copies of annual reports, annual audit reports and regularly prepared balance sheets and copies of certain documents, such as 10Ks filed with the Securities and Exchange Commission (''SEC''), must be provided in response to these Items. The proposed modification would allow filing persons to provide an Internet address linking directly to the documents required by Items 4(a) and (b) in lieu of providing paper copies. The Commission is also proposing an amendment to the rules to specify that an acquiring person's notification, and an acquired person's notification in certain types of transactions, shall expire after eighteen months if a second request to them remains outstanding.

DATES: Comments must be received on or before October 14, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''HSR Proposed Rulemaking, Project No. P989316,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by clicking on the following Weblink: *https://secure.commentworks.com/ftc-hsrexpirationofnotification* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ftc-hsrexpirationofnotification* Weblink. You also may visit *http://www.regulations.gov* to read this request for comment, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, or B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Section 803.2 Instructions Applicable to Notification and Report Form

In response to Items 4(a) and (b) of the Form, filing parties currently must provide paper copies of annual reports, annual audit reports and regularly prepared balance sheets and copies of certain documents, such as 10K's, filed with the SEC. Many of these documents are routinely submitted in electronic form to the SEC and are available on the SEC's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system, or via the Internet on company Web sites. Responses to these Items may often be voluminous and can account for the bulk of documents submitted with the Form.

In view of the ease with which the antitrust agencies can access these documents via the Internet, the proposed modification of paragraph 803.2(e) and Instructions to the Form would allow filing parties to provide an Internet address linking directly to the documents required by Items 4(a) and 4(b) in lieu of providing paper copies. Incorporating documents by reference to Internet Web pages would only apply to Items 4(a) and 4(b) and would not be available for responding to other items on the Form.

It would remain the filer's duty to ensure that the filing is accurate and complete, as attested by the filer's certification signature. Accordingly, it is proposed that Section 803.2 be further amended to provide that if an Internet link submitted is, or becomes, inoperative or the document that is linked to is incomplete, such that the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).