

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

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1962

RIN 0560-AE62

Post Bankruptcy Loan Servicing Notices

AGENCY: Farm Service Agency, USDA.
ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to revise its regulations regarding servicing accounts when a bankruptcy filing is dismissed. This change will clarify that a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers will be sent after a borrower is dismissed from bankruptcy if the borrower was not previously notified and the account was not accelerated.

DATES: Comments must be received by August 2, 1996 to be assured consideration.

ADDRESSES: Send comments to Director, Farm Credit Programs Loan Servicing and Property Management Division, USDA, FSA, P.O. Box 2415, Ag Box Code 0523, Washington, D.C. 20013-2415. Comments may be hand delivered to USDA, FSA at 14th and Independence Ave., SW., Room 5449-S, Washington DC. Supporting documents for the proposed rule, comments on the proposed rule and internal Agency use documents may be viewed during normal working hours at the above address with prior notification.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Credit Programs Loan Servicing Division, P.O. Box 2415, Ag Box Code 0523, Washington, D.C. 20013-2415, telephone (202) 720-9053.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and has not been reviewed by OMB.

Executive Order 12372

1. For the reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to and has met the provisions of E.O. 12372.

Programs Affected

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, Environmental Program. It is the determination of the issuing agencies that this action is not a major Federal action significantly affecting the environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Executive Order 12778

This proposed rule has been reviewed in accordance with E.O. 12778, 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 parts 11 and 780 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.

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 under the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601).

Paperwork Reduction Act

This final rule does not impose any new information or recordkeeping requirements on the public.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Under section 202 of the UMRA, agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and 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 agencies 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.

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

Discussion of Proposed Rule

These changes involve the farm credit programs (FCP) loans of FSA formerly administered by the Farmers Home Administration (FmHA) as Farmer Programs loans. This reorganization was authorized by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178). Current FSA direct FCP loan servicing regulations require a delinquent account servicing notice pursuant to 7 CFR part 1951, subpart S to be sent to borrowers if their bankruptcy is dismissed. Currently, in such cases, the Notice of the Availability of Loan Service Programs and Debt Settlement Programs for Delinquent Farm Borrowers, is sent depending on the advice of the Office of General Counsel, even if the borrower

had already exhausted all servicing rights and the account had been accelerated prior to the bankruptcy filing. Resending the notice causes extensive delays in the collection of accounts. The regulations at 7 CFR part 1962, § 1962.47 (d)(2) were promulgated to ensure that all borrowers who had filed bankruptcy but whose bankruptcy was dismissed would receive the initial notification of loan servicing options required by § 331D of the Consolidated Farm and Rural Development Act. It was never the intent of the regulation to allow renotification if the borrower's servicing rights had been exhausted and the account accelerated prior to the bankruptcy filing.

Moreover, the Agency is also revising the regulation to limit the scope and issuance of the loan servicing notice. When borrowers file for bankruptcy their attorney will only be notified of the loan servicing rights that remain. Upon dismissal of a bankruptcy action or a default in a confirmed bankruptcy reorganization plan, no new servicing notices will be sent if the borrower or borrower's attorney has been previously notified of the loan servicing options. Since the Agency's loan servicing program has been in effect since October 14, 1988, borrowers have had many opportunities to apply for loan servicing. Congress has limited the amount of debt forgiveness to \$300,000 per borrower, as well as limiting writedowns and buyouts under § 353 of the Consolidated Farm and Rural Development Act to one per borrower on loans made after January 6, 1988. See § 1816 of the Food Agriculture and Trade Act of 1990. In section 648(b) of the Federal Agriculture Improvement Act of 1996 (1996 Act) Congress imposed the further limitation that the Agency may not provide debt forgiveness on a direct loan if the borrower has already received debt forgiveness on a direct loan. Section 640 (2) of the 1996 Act expanded the definition of debt forgiveness to include discharging of debt as a result of bankruptcy. Based on these limitations, it is no longer appropriate for the Agency to renotify borrowers who have previously received the notice of loan servicing options. Many of these borrowers will no longer be eligible for additional loan servicing. Also, by expanding the definition of debt forgiveness to include discharges in bankruptcy, Congress has endorsed the view that the borrower has elected remedy in the filing of a bankruptcy petition.

Additionally, the agency is proposing to remove administrative processes from the regulations and has reserved certain

paragraphs, leaving only regulatory actions which impact the public in the Federal Register. This streamlining makes the regulation more concise and easier to read and understand. The Agency is developing a separate handbook to address such matters as what forms must be filed and where to submit loan requests and the Agency's internal operating procedures. This handbook will not be published in the Federal Register but will be available to the public upon request at no cost.

For example, in this rule, the Agency is removing the specific references to Exhibit D (Notice to Borrower's Attorney Regarding Loan Servicing Options) and Exhibit D-1 (Notice to Borrower Regarding Loan Service Options) of this subpart, which are attached to the loan servicing notices and further explain the interrelationship of the loan servicing programs to the bankruptcy petitions filed under chapters 7, 11, 12 and 13 of the Bankruptcy Code. While the Agency will continue to use these types of specialized notices, there is no statutory requirement that these types of notices be sent. Since these matters involve internal operating procedures, the requirement will be contained in the Agency's Instructions only, with the regulation referencing only that a form letter will be sent. Similarly, the Agency has removed Exhibits D and D-1 from this subpart. Since these documents are informational cover letters sent with the notices, the Agency is not required to publish them.

Furthermore, this rule makes minor wording changes, redesignates some numbered paragraphs and revises references to the Farmers Home Administration (FmHA) to reference FSA.

List of Subjects in 7 CFR Part 1962

Government property, Livestock, Loan programs—Agriculture, Personal property—crops, Rural areas.

Accordingly, it is proposed that 7 CFR part 1962 be amended as follows:

PART 1962—PERSONAL PROPERTY

1. The authority citation for 7 CFR part 1962 is revised to read as follows:

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

Subpart A—Servicing and Liquidation of Chattel Security

2. Section 1962.47 is revised to read as follows:

§ 1962.47 Bankruptcy and insolvency.

- (a) [Reserved]
- (b) Farm Credit Programs borrowers.

(1) When the local Agency loan servicing official becomes aware that a Farm Credit Program borrower has filed bankruptcy, the attorney of the borrower will be notified in writing of the borrower's remaining servicing options. The attorney of a borrower who is 90 days delinquent on their chapter 11, chapter 12 or chapter 13 reorganization plan will also be notified in a similar fashion. When borrowers are under the jurisdiction of the bankruptcy court and wants to be considered for loan servicing, they must meet the following conditions:

(i) The borrower must complete and return to the Agency an Acknowledgement of Notice of Program Availability and any application forms requested by the Agency within 60 days from the borrower's attorney's receipt of the notice; and

(ii) The borrower's attorney must request, in writing, servicing on behalf of the borrower within the 60-day time period. The Agency will consider this request to be an acknowledgment that the Agency will not be interfering with any rights or protections under the Bankruptcy Code and its automatic stay provisions. The Agency's processing of the application may include consideration of primary and preservation loan servicing options available under the applicable statutes and regulations, notification of the Agency's decision on the request and application for servicing, and holding any mediation, meetings or appeals requested by the borrower.

(2) If a borrower operating under a confirmed bankruptcy plan desires to apply for loan servicing and qualifies for servicing under the Agency's regulations, the borrower may be required to obtain modification of the bankruptcy reorganization plan.

(3) In chapter 7 cases, the Agency will not provide Primary Loan Servicing to a borrower discharged in bankruptcy, unless the borrower reaffirms the entire Agency debt. If the chapter 7 debtor wants to reaffirm the debt, the Agency will accept the reaffirmation if permitted by the court. If the Agency debt is reaffirmed, the loan servicing application will be processed in accordance with subpart S of part 1951 of this chapter. If the borrower reaffirms the Agency debt in order to be considered for restructuring but is later denied restructuring, the borrower may revoke the reaffirmation. No reaffirmation is necessary for any discharged chapter 7 borrower to be eligible for Preservation Loan Service Programs in accordance with subpart S of part 1951 of this chapter.

(c) [Reserved]

(d) Liquidation.

(1) If a borrower's bankruptcy is dismissed and the account was not previously accelerated, the borrower will be notified of remaining Agency servicing options if any. When the bankruptcy is dismissed and liquidation of an account is necessary, liquidation will be conducted in accordance with § 1962.40 of this subpart and § 1965.26 of subpart A of part 1965 of this chapter as appropriate, except that the Notice of the Availability of Loan Service Programs and Debt Settlement Programs for Delinquent Farm Borrowers with attachments will only be sent to the borrower if they were not previously sent to the borrower or the borrower's attorney.

(2) In chapter 11, 12, or 13 reorganizations, if liquidation is necessary while the bankruptcy is pending, the borrower's attorney will be sent a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers with attachments if allowed by the Bankruptcy Code and if not previously sent to the borrower's attorney.

(3) In chapter 11, 12 or 13 cases, if liquidation is necessary after the case is closed, the borrower will be sent a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers with attachments if not previously sent to the borrower's attorney and if not prohibited by the provisions of the Bankruptcy Code. If an application for servicing is received under this paragraph, it will be processed in accordance with subpart S of part 1951 of this chapter. If the borrower does not qualify for loan servicing, the account will be accelerated.

(4) In chapter 7 cases, after discharge loans will be liquidated if the borrower has not reaffirmed the debt and the property is no longer part of the estate. Liquidation may proceed prior to discharge if allowed by the court. Borrowers will be sent a letter and a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers with attachments if the borrower or the borrower's attorney was not previously so notified. If these notices were sent previously, the borrower will be sent an acceleration notice.

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3. Exhibit D is removed.

4. Exhibit D-1 is removed.

Signed in Washington, DC, on July 8, 1996.

Eugene Moos,

*Under Secretary for Farm and Foreign
Agricultural Services.*

[FR Doc. 96-18251 Filed 7-17-96; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-AAL-13]

Proposed Revision of Class E Airspace; Homer, AK

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action will revise Class E airspace at Homer, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 21 at Homer Airport, AK, has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Homer, AK.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL-530, Docket No. 96-AAL-13, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL-538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96-AAL-13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL-530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Homer, AK, due to the creation of a GPS instrument approach to RWY 21. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in