

Proposed Rules

Federal Register

Vol. 69, No. 86

Tuesday, May 4, 2004

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-AG65

Guaranteed Farm Ownership and Operating Loan Requirements

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to revise its regulations governing guaranteed loans to allow lenders to use guaranteed loans as security for loans to the lenders. The Agency also proposes to remove certain unnecessary documentation and security requirements, correct errors, and clarify its procedures for applying for, making, and servicing FSA guaranteed loans.

DATES: Comments on this proposed rule must be received on or before July 6, 2004, to be given full consideration. Comments received after that date will be considered to the extent possible.

ADDRESSES: The Farm Service Agency invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *E-Mail:* Send comments to Galen.VanVleet@usda.gov.
- *Fax:* Submit comments by facsimile transmission to: (202) 720-6797.
- *Mail:* Send comments to Director, Loan Making Division, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250-0522;
- *Hand Delivery or Courier:* Deliver comments to Office of the Director, Loan Making Division, Farm Service Agency, U.S. Department of Agriculture, Suite 240, 1280 Maryland Ave., SW., Washington, DC 20250-0522.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, Loan Making

Division, Farm Service Agency, U.S. Department of Agriculture, Suite 240, 1280 Maryland Ave., SW., Washington, DC 20250-0522, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Galen VanVleet, Senior Loan Officer, Loan Making Division, Farm Service Agency; telephone: (202) 720-3889; facsimile: (202) 720-6797; e-mail: Galen.VanVleet@usda.gov.

SUPPLEMENTARY INFORMATION:

Discussion of the Proposed Rule

Definition of "Financially Viable Operation"

Section 762.102(b) defines the term "financially viable operation." However, the term is not used in the regulation. To avoid confusion, the term and definition are removed.

Preferred and Certified Lender Programs

Section 762.106(b)(8) requires that lenders applying for Certified Lender Program (CLP) status submit copies of forms to be used for farm loan program processing and servicing, such as financial statements, cash flow plans, and budgets. This requirement is unnecessary and will be removed. FSA field offices are already familiar with forms that are used by lenders applying for CLP status. To qualify for CLP, lenders must have first made a certain number of guaranteed loans as Standard Eligible Lenders (SEL's), and the forms relative to those loans are reviewed by FSA.

Section 762.106(c)(8) requires that Preferred Lender Program (PLP) lenders designate a person or persons, approved by FSA, to process and service PLP loans. The existing regulation has been confusing and somewhat contrary to the intent of the PLP program, in that it unnecessarily involves FSA in lender decisions. Therefore, the proposed rule removes the requirement that the Agency approve the designee(s) and modifies the regulation to allow the lender to designate the responsible party by name, title, or position.

Interest Rates and Fees

Section 762.124(e)(1) provides that lenders may charge fees provided they are no greater than those charged to customers without an FSA guarantee for similar transactions. There has been some confusion as to whether third-

party processing fees are included in this restriction. The proposed rule clarifies that lenders may not charge, or cause to be charged, any processing, servicing, or packaging fees that are not charged to non-guaranteed customers for similar transactions.

Security Requirements

Section 762.126(e) generally provides that all guaranteed loans be secured by the best lien obtainable. In addition, the regulation establishes restrictions on acceptable lien positions for security on guaranteed loans. One restriction is that when a loan is made for refinancing purposes the guaranteed loan must hold a security position no lower than on the refinanced loan. When lenders refinance chattel secured loans with a loan secured by real estate, this restriction requires them to obtain or maintain a lien on the chattels. This unnecessarily restricts flexibility and may impair the lender's ability to provide the best terms and rates. The proposed rule removes this restriction.

Another restriction, under section 762.126(e) limits junior lien positions to situations where equity position is strong. This restriction has been difficult to implement equitably because of varying interpretations of "strong." It is proposed that the junior liens instead be limited to situations where the amount of debt, including the proposed junior lien, is less than or equal to 75 percent of the value of the security. This would equate to an equity position of 25 percent and is consistent with the existing requirement in section 762.142(b), which permits partial releases based, in part, on a 75-percent debt to security requirement.

Restructuring Guaranteed Loans

Section 762.145 (b)(6)(i) contains an incorrect citation to the loan limits. The proposed rule corrects that citation.

Sale, Assignment, and Participation

A new section, 762.159, is proposed to address the use of Agency guaranteed loans as security for lender funding. Many lenders routinely borrow money from a Federal Home Loan Bank or a Federal Reserve Bank to meet funding or liquidity needs. Lenders are usually required to pledge loan assets, which may include Agency guaranteed loans, as security for the loans. The existing regulation's restrictions on assignments has led to confusion as to how or

whether a lender can pledge guaranteed loans. The proposed new section would explicitly allow pledging Agency guaranteed loans to Federal Home Loan Banks or Federal Reserve Banks. The regulation provides that, in the event that a Federal Home Loan Bank or Federal Reserve Bank acquires a guaranteed loan as a result of enforcing a pledge, the guarantee is unenforceable until a new, eligible lender is substituted in accordance with existing procedures. This provision is included to assure that there is no increase in risk to the Agency as a result of servicing lapses or negligent servicing until an eligible lender who assumes all servicing responsibilities is substituted.

Section 762.160 deals with the sale, assignment, and participation of guarantees. This rule proposes to revise this section to clarify confusing portions and remove unnecessarily restrictive provisions. As used in the existing section and as defined in section 762.102(2), "sale of guaranteed portion" and "assignment of guaranteed portion" are synonymous. To reduce confusion, references to "sale of guaranteed portion" are removed, including the definition in section 762.102(b). The existing section requires Agency concurrence for participation in a guarantee. A participation is where a person or organization buys an interest in a loan in which the originating lender keeps the note, the collateral securing the note, and all responsibility for loan servicing. The Agency has determined that the use of participation does not affect the risk to the Agency because the originating lender retains the note and all servicing responsibility, and a participant has no claim to the guarantee in case of default. Because the risk to the Agency is not affected, the unnecessary requirement of Agency concurrence for participation is removed in the proposed rule. Because the term "participation" will no longer be used, the proposed rule also will remove the term and definition in section 762.102(b).

Executive Order 12866

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

Regulatory Flexibility Act

FSA certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Pub. L. 96-534, as

amended (5 U.S.C. 601). In any case, none of the lenders using the guaranteed loan program are small entities, and this rule does not impact the smaller entities to a greater extent than the larger entities.

Environmental Assessment

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 regulations for compliance with NEPA, 7 CFR part 1940, Subpart G. FSA concluded that the rule requires no further environmental review because it is categorically excluded. 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. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. It will not affect agreements entered into before the effective date of the rule to the extent the rule is inconsistent with those agreements. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before bringing any action for judicial review.

Executive Order 12372

For reasons set forth in the notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities in 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 the 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.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this proposed rule require no revisions to the information collection requirements that were

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, Loan programs—Agriculture.

Accordingly, it is proposed that 7 CFR chapter VII 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.

§ 762.102 [Amended]

2. In § 762.102(b), remove the definitions of "Financially viable operation," "Participation," and "Sale of guaranteed portion".

3. Amend § 762.106 by removing paragraph (b)(8) and revising paragraph (c)(8) to read as follows:

§ 762.106 Preferred and certified lender programs.

* * * * *

(c) * * *

(8) Designate a person or persons, either by name, title, or position within the organization, to process and service PLP loans for the Agency.

* * * * *

4. Revise § 762.124(e)(1) to read as follows:

§ 762.124 Interest rates, terms, charges, and fees.

* * * * *

(e) * * *

(1) The lender may charge the loan applicant and borrower fees for the loan provided they are no greater than those charged to unguaranteed customers for similar transactions. The lender may not charge, or cause to be charged, any processing, servicing, or packaging fee not charged to unguaranteed customers for similar transactions. Similar transactions are those involving the same type of loan requested (for example, operating loans or farm real estate loans).

* * * * *

5. In § 762.126, remove paragraph (e)(1), redesignate paragraphs (e)(2), (e)(3), and (e)(4) as (e)(1), (e)(2), and (e)(3), respectively, and revise newly designated paragraph (e)(2) to read as follows:

§ 762.126 Security requirements.

* * * * *

(e) * * *

(2) Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 75 percent of the value of the security. Junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the crops or livestock products.

* * * * *

6. Revise § 762.145(b)(6)(i) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(6) * * *

(i) As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal which the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 761.8 of this chapter.

* * * * *

7. Add § 762.159, to read as follows:

§ 762.159 Pledging of guarantee.

A lender may pledge all or part of the guaranteed portion of the loan as security to a Federal Home Loan Bank or Federal Reserve Bank. In the event that a Federal Home Loan Bank or Federal Reserve Bank acquires a guaranteed loan as a result of enforcing its security interest, the guarantee will be unenforceable until a new eligible lender is substituted in accordance with § 762.105. The guarantee will not cover a loss that results from negligent servicing during any period when the loan is held by an ineligible lender, including the Federal Home Loan Bank or Federal Reserve Bank.

8. Revise § 762.160 to read as follows:

§ 762.160 Assignment of guaranteed portion.

(a) The following general requirements apply to assigning guaranteed loans.

(1) Subject to Agency concurrence, the lender may assign all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, if the loan is not in default. However, a line of credit cannot be assigned.

(2) The Agency may refuse to execute the Assignment of Guarantee in case of the following:

(i) The Agency purchased and is holder of a loan that was assigned by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180-day reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate executed forms used in the assignment.

(4) The guaranteed portion of the loan may not be assigned by the lender until the loan has been fully disbursed to the borrower.

(5) The lender is not permitted to assign any amount of the guaranteed or unguaranteed portion of the loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender's assignment of the guaranteed portion of the loan, the lender will remain bound to all obligations indicated in the Guarantee, the Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lender's Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender's assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan assigned.

(2) The lender will send the holder the borrower's executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must assign the guaranteed portion back to the original lender if requested by the lender for servicing or liquidation of the account.

(4) The guarantee or assignment of guarantee in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the assignment of guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

Signed in Washington, DC on April 12, 2004.

Verle E. Lanier,

Acting Administrator, Farm Service Agency.

[FR Doc. 04-10068 Filed 5-3-04; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service****9 CFR Parts 317 and 381**

[Docket No. 03-026P]

RIN 0583-AD05

Uniform Compliance Date for Food Labeling Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to establish January 1, 2008, as the uniform compliance date for new food labeling regulations that are issued between January 1, 2005, and December 31, 2006. FSIS is proposing to establish a uniform compliance date to minimize the economic impact of labeling changes by providing for an orderly industry adjustment to new labeling requirements. Furthermore, FSIS is establishing the uniform compliance date to be consistent with the approach that the Department of Health and Human Services, Food and Drug Administration (FDA) has already established.

DATES: Submit comments by July 6, 2004.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions at that site for submitting comments.

All submissions received must include the Agency name and docket number 03-026P or Regulatory Information Number (RIN) 0583-AD05.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be