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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

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations regarding servicing accounts when a bankruptcy filing is dismissed. This change will clarify when a Notice of the Availability of Loan Service and Debt Settlement Programs for Delinquent Farm Borrowers will be sent to a borrower who is in or has been dismissed from bankruptcy. The intended effect of this rule is to improve the efficiency of the Agency's servicing of delinquent borrowers who have filed bankruptcy petitions.

EFFECTIVE DATE: May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Senior Loan Officer, Farm Service Agency, U.S. Department of Agriculture, Room 5441–S, 1400 Independence Age., SW, Washington, D.C. 20250–0523; Telephone: 202–720–1659, e-mail: klaris@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

New provisions included in this rule will not have a significant economic impact on a substantial number of small entities. It will not impact small entities to a greater extent than large entities, except to the extent that large entities may not be eligible for loan assistance to begin with, since they would be considered larger than a family-sized farm. Thus large entities may not be borrowers who have filed bankruptcy petitions, and therefore, subject to these rules. To the extent that large entities qualify for Farm Loan Program loan assistance and file bankruptcy petitions, large entities are subject to these rules to the same extent as small entities. Therefore, this rule is determined to be exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The issuing agencies have determined that this action does not significantly affect the quality of human 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 12988

This final rule has been reviewed under Executive Order 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. 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.

Federal Assistance Programs Affected
10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Executive Order 12372

For reasons set forth in the notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Operating Loans and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. However, the Soil and Water Loan and Farm Ownership Loan Programs are subject to the provisions of Executive Order 12372. The Agency has conducted the intergovernmental consultation requirements in accordance with RD Instruction 1940–J. (See the Notice related to 7 CFR 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector of $100 million or more in any 1 year. Under section 202 of the UMRA, FSA 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, or 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 202 of the UMRA generally requires FSA 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.

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

Discussion

These changes involve the Farm Loan Programs (FLP) loans of FSA formerly administered by the Farmers Home Administration (FmHA). The Farmer Programs loans reassignment of this program to FSA was authorized by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat.3178).

Current FSA direct FLP loan servicing regulations require that a ''Notice of the Availability of Loan Service Programs and Debt Settlement Programs for Delinquent Farm Borrowers,'' be sent to

borrowers if their bankruptcy is dismissed. A delinquent account servicing notice, pursuant to 7 CFR part 1951, subpart S, may be sent in such cases, even if the borrower had already exhausted all servicing rights and the account had been accelerated prior to the bankruptcy filing. Repeating the notice may cause extensive delays in the collection of accounts and substantially wastes the money and time of the Agency by requiring a procedure which has already been completed. To ensure that 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, the regulations at 7 CFR 1962.47(d)(2) were rigidly written and construed. However, they were not intended to require renotification if the borrower's servicing rights had been exhausted prior to the bankruptcy filing.

In certain situations, the Agency is limiting the issuance of a new loan servicing summary notice authorized under § 331D of the Consolidated Farm and Rural Development Act (Act). Provided the account has not been accelerated, the attorney for the borrower and the borrower will be notified only of the loan servicing options that remain when the bankruptcy is filed. That notification will also occur upon dismissal of a bankruptcy action without confirmation of a bankruptcy plan, and upon default in a confirmed bankruptcy plan if the bankruptcy has been dismissed or closed and the borrower has not substantially completed the confirmed plan. No additional primary loan servicing action will be given upon discharge under chapter 7 of the Bankruptcy Code.

The Agency's present loan servicing program has been in effect since October 14, 1988, and borrowers have had many opportunities to apply for loan servicing. Section 1816 of the Food, Agriculture, Conservation, and Trade Act of 1990 limited the amount of debt the Agency could forgive to $300,000 per borrower, and limited writedowns and buyouts under § 353 of the Consolidated Farm and Rural Development Act (Con Act) to one per borrower on loans made after January 6, 1988.

Section 648(b) of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) added § 373 to the Con Act in which 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 another direct loan. Section 640(2) of the 1996 Act added a definition of debt forgiveness as § 343(a)(12) of the Con Act that includes discharging of debt as a result of bankruptcy. Based on these limitations, it is no longer appropriate for the Agency to renotify all borrowers who have previously exhausted loan servicing options and have been unable to correct their delinquency or service their debt. Many of these borrowers will no longer be eligible for additional loan servicing.

A proposed rule was published on July 18, 1996, (61 FR 37405–07) with a comment period ending August 2, 1996. Comments were received from only one party, an organization representing family farmers. Their comments were divided into four parts. First, it was recommended that the rule be clarified by requiring that notices be sent also to the borrower at his or her address to ensure proper notification when a bankrupt borrower is not represented by an attorney. Since this recommendation may help to ensure proper notification, it was adopted.

Second, the commenter felt that the requirement in the proposed rule that to be considered for servicing, a bankrupt borrower and his or her attorney must both request loan servicing in writing was overly burdensome. The Agency agrees with the commenter and has amended the rule accordingly by requiring either the bankrupt borrower or his or her attorney to submit a request for servicing.

Third, the commenter noted that the rule could be interpreted to preclude sending loan servicing notices to a bankrupt borrower who becomes delinquent on an approved plan of reorganization, even if the borrower has performed under the plan, if the borrower has received notices in the past. In response, the paragraph noted by the commenter was amended to require the following: (1) if the borrower has not exhausted servicing rights, the notice explaining FSA's Farm Loan Programs will be sent to a borrower whose bankruptcy is dismissed before one full payment is made under the plan, unless the borrower's account is under the jurisdiction of the bankruptcy court or has been referred to the Department of Justice; and (2) a new loan servicing summary notice will be sent to a borrower who has a plan confirmed by the court if the borrower substantially complies with the bankruptcy plan, but later defaults on the plan, and the bankruptcy is dismissed, provided the lack of compliance is for reasons beyond the borrower's control and the account has not been accelerated.

As was the case under the predecessor rule, in the situation described in item (2) of the preceding paragraph, no new loan servicing summary notices will be sent if the Agency is advised that sending the notices is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code. Also, no notices will be sent if the case is within the jurisdiction of the bankruptcy court or has been referred to the Department of Justice. This exception is provided to correct situations where there are jurisdictional conflicts between those delegated to finally decide the matter. The Agency wished to conform to jurisdictional principles that establish the superior authority of a bankruptcy court and the Department of Justice. Of course, any borrower who has satisfactorily completed the confirmed plan will be treated the same as any other rehabilitated borrower for the purpose of loan servicing.

The Agency believes that these changes to the proposed rule conform to the spirit of the commenter's objections because they provide that most delinquent borrowers, except as explained above, who have substantially complied with their bankruptcy plans will receive an additional opportunity to apply for loan servicing within the parameters provided by Congress. This policy is justified because the obligations of these borrowers to the Agency have been modified by a confirmed bankruptcy plan (for borrowers filing under chapter 11 of the Bankruptcy Code) or by a completed bankruptcy plan (for borrowers filing under chapters 12 and 13 of the Bankruptcy Code), and they have substantially complied with this obligation.

While *Lee* v. *Yuetter*, 917 F.2d 1104 (8th Cir.1990), upheld the Agency's regulation providing that discharged chapter 7 borrowers did not have outstanding obligations to the Agency and were not borrowers for primary loan servicing purposes, this holding is limited to borrowers discharged under chapter 7 of the Bankruptcy Code. See *Lee* v. *Yeutter*, 106 B.R. 588, 592 (D. Minn., 1989), which contrasted borrowers discharged under chapter 7 of the Bankruptcy Code who have no debt to the Agency that could be further restructured with those borrowers who filed under the reorganization chapters of the Bankruptcy Code who have obligations to the Agency under their confirmed bankruptcy plans which are capable of being restructured. Accordingly, the Agency has always considered borrowers discharged under confirmed reorganization bankruptcy

plans to still be ''borrowers.'' While discharged reorganization borrowers who have completed a confirmed plan, like other borrowers who have received previous debt forgiveness from the Agency on another loan, cannot receive additional debt forgiveness, as defined by § 343(a)(12) of the Con Act, they may be eligible for other servicing options provided by FSA regulations.

The commenter also was disturbed by the Agency's removal of internal agency processes from its published regulations and placing these items in a handbook which would be available to the public upon request at no cost. The commenter expressed concerns that the Agency's streamlining efforts may undercut the rulemaking process and substantive requirements upon which public comment should be solicited will be left out of the **Federal Register**. The commenter offered the example of the former Agricultural Stabilization and Conservation Service allegedly maintaining handbook provisions that conflicted with published regulations, and using the handbook instead of regulations to implement substantive provisions. As an alternative, the commenter suggests that the Agency narrowly define the content of the handbook so that it would include only those items which are clearly internal operating procedures.

The commenter's concerns are understandable. However, Agency regulations, as they are currently written, contain an excessive amount of specific internal policy. In accordance with a Governmentwide mandate of the National Performance Review, the Agency must remove internal administrative processes from the regulations. In addition, 5 U.S.C. 551 does not require the publication of internal administrative processes not affecting the general public. Reform of FSA regulations will ultimately obsolete the regulations of the defunct FmHA, reduce the burden associated with making policy changes, improve the readability of regulations and reduce the volume of extraneous published material.

For example, in this rule, the Agency is removing the specific references to Exhibit D (Notice to Borrower's Attorney Regarding Loan Servicing Options) of this subpart, that is sent with the loan servicing notices to 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 this type of specialized notice, there is no statutory requirement that this type of notice be sent. Since these matters involve internal operating procedures, the requirement will be contained in the Agency's handbook only, with the regulations referencing only that a notice will be sent. Similarly, the Agency has removed Exhibit D from this subpart. Since this document is an informational cover letter sent with the notices, the Agency is not required to publish it.

The commenter suggested that the FSA handbooks be available to the general public through the FSA Web Page. Currently, the FSA Web Page is limited to general information on the Agency's programs; however, the Agency does plan to provide FSA handbooks through a Web Page as soon as resources are available. The procedures used by the USDA, Rural Development agencies, which include many procedures of the former FmHA, are available on the World Wide Web at http://www.rdinit.usda.gov/regs/. This includes procedures that are shared by FSA Farm Loan Programs and the Rural Development agencies, including the one affected by this final rule, RD Instruction 1962–A.

Good cause is shown to make this rule immediately effective upon publication in the **Federal Register** and without the 30-day period required by 5 U.S.C. 551. This rule substantially improves the efficiency of the Agency's servicing of delinquent borrowers who have filed bankruptcy petitions by revising the requirement that additional loan servicing notices be sent whenever a bankruptcy is dismissed. Also, the Agency will notify borrowers within the jurisdiction of the bankruptcy court of remaining servicing rights rather than beginning the lengthy servicing process anew whenever a bankruptcy is filed, regardless of whether the account has been previously accelerated or the Agency has previously sent servicing notices. Expediting liquidation when servicing rights have been exhausted serves the public interest. Therefore, good cause is shown to make this final rule effective immediately.

List of Subjects in 7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1962—PERSONAL PROPERTY

1. The authority citation for part 1962 continues 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) *Borrower files bankruptcy*. When the Agency becomes aware that a Farm Loan Programs borrower has filed for protection under Title 11 of the United States Code (bankruptcy), the borrower and the borrower's attorney, if any, will be notified in writing of the borrower's remaining servicing options.

(1) If the borrower wishes to apply for servicing options remaining, the borrower, or the borrower's attorney on behalf of the borrower, must sign and return the appropriate response form, or similar written request for servicing, and any forms or information as requested by the Agency, within 60 days from the date the borrower or the borrower's attorney received the notification, or the time remaining from a previous notification that was suspended when the borrower filed bankruptcy, whichever is greater.

(2) The Agency will consider a request for servicing options 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.

(3) The Agency's processing of any request for servicing may include consideration of primary and preservation loan servicing options, notification of the Agency's decision on the request or application for servicing, mediation, and holding of any meetings or appeals requested by the borrower.

(4) If court approval is required for the borrower to exercise these servicing rights, it will be the borrower or the borrower's attorney's responsibility to obtain that approval.

(5) If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and 7 CFR part 1951, subpart S, as appropriate.

(6) 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 obtains the permission of the court and reaffirms the debt, the loan servicing application will be processed in accordance with 7 CFR part 1951, subpart S. 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 subject to the provisions of the Bankruptcy Code. No reaffirmation is necessary for any discharged chapter 7 borrower to be eligible for preservation loan servicing in accordance with 7 CFR part 1951, subpart S.

(b) *Borrower defaults on plan or bankruptcy is dismissed*—(1) *90 days past due on a reorganization plan while still under court jurisdiction.*

(i) If allowed by the Bankruptcy Code or court, the borrower and the borrower's attorney, if any, will be notified of any remaining servicing options under 7 CFR part 1951, subpart S, that were not exhausted prior to filing bankruptcy or during the bankruptcy proceedings according to paragraph (a) of this section.

(ii) No notices will be sent if the account was previously accelerated, such action is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code, or the case has been referred to the Department of Justice.

(iii) If a borrower operating under a confirmed bankruptcy plan desires to apply for loan servicing and qualifies for servicing under 7 CFR part 1951, subpart S, the borrower must also comply with Bankruptcy Code rules and requirements concerning modification of the plan.

(2) *Bankruptcy is dismissed without a confirmed plan.* If the borrower's bankruptcy is dismissed without a confirmed plan, and the borrower is in default on Farm Loan Programs loans, the borrower's account will be liquidated after all remaining servicing options under 7 CFR part 1951, subpart S are exhausted. The borrower will be notified of any servicing options remaining according to 7 CFR part 1951, subpart S. Notwithstanding the previous sentence, no notices will be sent if the account was previously accelerated, the Agency is advised that such an act is inconsistent with the confirmed bankruptcy plan or the Bankruptcy Code, or the account has been referred to the Department of Justice.

(3) *Bankruptcy is dismissed after a confirmed reorganization plan.* If a bankruptcy is dismissed after a reorganization plan was confirmed, the account will be serviced as follows:

(i) If the borrower has substantially complied with the plan, but later defaults for reasons beyond the borrower's control, (see 7 CFR 1951.909(c)), the borrower will be notified of loan servicing in accordance with 7 CFR 1951.907. No notices will be sent if the account was previously accelerated; such action is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code; or the case has been referred to the Department of Justice.

(ii) If the borrower failed to make one full payment under the plan, or did not comply with the plan for reasons not beyond the borrower's control, the borrower will be serviced according to paragraph (b)(2) of this section.

(c) *Servicing of bankruptcy loans after the case is closed.* In chapter 11, 12, or 13 cases after the case is closed and the discharge order is issued by the court, if the borrower becomes delinquent after performing as agreed under the plan, the borrower will be sent a notice explaining the loan servicing options available under 7 CFR part 1951, subpart S. The borrower's attorney of record will be sent a courtesy copy if the bankruptcy has not been closed for at least 2 years. No notices will be sent if the account has been accelerated, such act is inconsistent with the provisions of a confirmed bankruptcy plan or other provisions of the Bankruptcy Code, or the account has been referred to the Department of Justice.

(d) *Liquidation.* The account will be liquidated after obtaining any necessary relief, if required, from the automatic stay. In chapter 7 cases after discharge, the account can be liquidated if the debt has not been reaffirmed and the property is no longer part of the estate. Liquidation can proceed prior to discharge if allowed by the court.

(1) If the borrower or borrower's attorney was not previously notified of any remaining servicing options available under 7 CFR part 1951, subpart S before or during the course of the bankruptcy proceedings, the borrower and the borrower's attorney will be sent the notices referenced in paragraph (c) of this section prior to liquidating any security property.

(2) If the borrower or the borrower's attorney had been previously notified of loan servicing options remaining, the account will be liquidated.

3. Exhibit D of subpart A is removed and reserved.

Signed in Washington, D.C., on March 21, 1998.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

Signed in Washington, D.C., on April 6, 1998.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 98–14007 Filed 5–28–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 98–051–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services for travel from Champlain, NY, to Highgate, VT. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Louise Rakestraw Lothery, Director, Resource Management Support, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737, (301) 734–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Veterinary Services (VS) on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places