

Rules and Regulations

Federal Register

Vol. 66, No. 16

Wednesday, January 24, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 761, 762, 1901, 1941, 1943, 1945, 1955, and 1965

RIN 0560-AG15

Loan Limitations and Cash Flow Requirements for Farm Service Agency Guaranteed Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency (FSA) guaranteed loan regulations to remove the requirement that the Agency consider the costs of replacing capital items when considering whether a guaranteed loan customer has adequate capacity for debt service. Also, this rule provides for the adjustment of maximum guaranteed loan limits annually based on an index of prices paid by farmers and moves all loan limitation provisions to part 761. Finally, this rule updates and clarifies provisions in the guaranteed loan regulation.

DATES: Effective on February 23, 2001.

FOR FURTHER INFORMATION CONTACT: For additional information contact Phillip Elder, Senior Loan Officer, FSA, USDA, Farm Loan Programs Loan Servicing Division, Room 6966-S, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250-0523, telephone (202) 690-4012.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule was reviewed by the Office of Management and Budget under

Executive Order 12866 and has been determined to be significant.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, Public Law 96-534, (5 U.S.C. 601), the undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities. FSA program participants are predominantly family sized farmers and ranchers and, as defined by the U.S. Small Business Administration, approximately 98 percent of all farmers are classified as small businesses. Still, this rule does not involve a new or expanded program and the provisions in this rule will not impact a substantial number of small entities to a greater extent than large entities. The intent of this rule is to reduce confusion and implement legislation. Program participation is voluntary and requires no direct action on the part of small entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Impact Statement

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

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 these changes apply to loans guaranteed prior to the effective date of the rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before requesting judicial review.

Executive Order 12372

The notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) found 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.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost/benefit assessment, for proposed and final rules with "Federal mandates" that may result in expenditures of \$100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates, as defined by 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 UMRA.

Paperwork Reduction Act

The amendments to 7 CFR, chapters VII and XVIII, contained in this final rule require no revisions to the information collection requirements that were previously approved by OMB under control numbers 0560-0155, 0560-0157, 0560-0158, and 0560-0162. This change will not affect the number of respondents or the burden hours approved under these or any other control numbers.

Federal Assistance Program

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

Discussion of the Final Rule

This rule primarily amends the regulations under 7 CFR part 762 "Guaranteed Farm Loans" that govern the guaranteed farm loan programs of FSA. Part 762 was published as a final rule on February 12, 1999 (64 FR 7358–7403), to replace the former regulations for FSA guaranteed farm loans and those of its predecessor Agency, the Farmers Home Administration (FmHA). FmHA was abolished by the Department of Agriculture Reorganization Act of 1994 (Public Law 103–154, October 13, 1994). Since publication of part 762, legislation has deleted some of the regulation's requirements and changed how others are administered. Also, implementation of the regulation in USDA field offices has prompted the clarification of some provisions. For example, provisions that require the lender to execute a modification of the guarantee in certain instances are amended to state that any modification of the guarantee also must be executed by FSA. Another example is the removal of extraneous provisions in § 762.150 that limit when a loan with interest assistance can be considered for restructuring.

This rule removes the provision that requires an applicant to have a "positive cash flow," with a 10-percent margin above debt service requirements in order to be eligible for a guaranteed loan. Consistently, this rule also removes the requirement for a cash flow margin in order to be approved for interest assistance and annual continuation of interest assistance subsidy. The 10-percent margin requirement is removed in accordance with § 3019 of the 1999 Emergency Supplemental Appropriations Act (Public Law 106–31, May 21, 1999), which revised § 339(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989 *et seq.*) (CONACT) to remove the words, "including expenses of replacing capital items (determined after taking into account depreciation of the items)" from its debt service margin requirement. The Agency will instead require lenders to certify that guaranteed loan applicants demonstrate only a "feasible plan," a term that is defined in § 762.102 as the ability to cash flow (meet debts and other expenses), but requiring no capital replacement margin.

Also, this rule amends the Agency regulations that govern the size of loan that may be guaranteed by the Agency. Section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law

105–277, October 21, 1998) (1999 Act) amended the guaranteed loan limits of §§ 305 and 313 of the CONACT. The 1999 Act adjusted the limitations on the amount of farm ownership and farm operating loans based on the rate of inflation applicable to the fiscal year. This percentage change in the maximum loan size is determined by the percentage change in the Prices Paid by Farmers Index as compiled by the USDA, National Agricultural Statistics Service. The Agency is implementing this change by publishing a new section for all updated loan limitations at 7 CFR 761.8 (General and Administrative) and deleting the dollar loan maximum provisions in 7 CFR 762.122, 1941.29, 1943.29, 1943.79, and 1945.163. The new section refers to direct and guaranteed Soil and Water loans, which are no longer being funded. However, a few such loans are outstanding.

Other conforming changes are being made to provisions governing loan limitations, and Agency approval authorities are being removed as obsolete and unnecessary, in 7 CFR parts 1901, 1941, 1943, 1945, 1955, and 1965. Tables of loan approval authorities by official title and maximum loan amount will still be available at each local Agency office.

In accordance with 5 U.S.C. 553, the Agency has determined that a notice or proposed rule is unnecessary for the clarifications and amendments made in this rule because they involve nondiscretionary statutory requirements and clarifications of current Agency policy, not substantive revisions to program requirements.

List of Subjects

7 CFR Part 761

Accounting, Agriculture, Loan programs—agriculture, Rural areas.

7 CFR Part 762

Agriculture, Loan programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1901

Agriculture, Authority delegations, Grant programs—agriculture.

7 CFR Part 1941

Agriculture, Crops, Livestock, Loan programs—agriculture, Rural areas, Youth.

7 CFR Part 1943

Agriculture, Crops, Loan programs—agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—agriculture.

7 CFR Part 1955

Agriculture, Foreclosure, Government property, Loan programs—agriculture, Sale of government acquired property, Surplus government property.

7 CFR Part 1965

Accounting, Foreclosure, Loan programs—agriculture, Rural areas.

Accordingly, 7 CFR is amended as follows:

PART 761—GENERAL AND ADMINISTRATIVE

1. The authority citation for part 761 is revised to read as follows:

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

Subpart A—General Provisions

2. Section 761.8 is added to read as follows:

§ 761.8 Loan limitations.

(a) *Dollar limits.* The outstanding principal balances for a farm loan applicant or anyone who will sign the promissory note cannot exceed the following:

(1) Farm Ownership loans, Beginning Farmer Down payment loans and Soil and Water loans:

(i) Direct—\$200,000;

(ii) Guaranteed—\$731,000 (Fiscal Year 2001);

(iii) Any combination of a direct Soil and Water loan, direct Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Farm Ownership loan—\$731,000 (Fiscal Year 2001);

(2) Operating loans:

(i) Direct—\$200,000

(ii) Guaranteed—\$731,000 (Fiscal Year 2001)

(iii) Any combination of a direct Operating loan and guaranteed Operating loan—\$731,000 (Fiscal Year 2001);

(3) Any combination of guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—\$731,000 (Fiscal Year 2001);

(4) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—\$931,000 (Fiscal Year 2001);

(5) Emergency loans—\$500,000;

(6) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, guaranteed Operating loan, and Emergency loan—\$1,431,000 (Fiscal Year 2001).

(b) *Adjustment*. The dollar limits of guaranteed loans will be adjusted each fiscal year based on the percentage change in the Prices Paid by Farmers Index as compiled by the USDA, National Agricultural Statistics Service (NASS).

(c) *Line of credit advances*. The total dollar amount of guaranteed line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

PART 762—GUARANTEED FARM LOANS

3. The authority citation for part 762 is revised to read as follows:

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

4. In § 762.102 the definition of "Positive cash flow" is removed and the definition of "Feasible plan" is revised to read as follows:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) * * *

Feasible plan. A plan is feasible when a borrower or applicant's cash flow budget indicates that there is sufficient cash inflow to pay all cash outflow each year during the term of the loan. If a loan approval or restructuring action exceeds one production cycle and the planned cash flow budget is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one cycle is required for approval.

* * * * *

5. Section 762.105 is amended by removing and reserving paragraph (c)(2)(iii) and revising paragraph (c)(1) to read as follows:

§ 762.105 Eligibility and substitution of lenders.

* * * * *

(c) * * *

(1) The Agency approves of the substitution in writing by executing a modification of the guarantee to identify the new lender, the amount of debt at the time of the substitution and any new loan terms if applicable.

* * * * *

§ 762.122 [Amended]

6. In § 762.122, paragraphs (a) and (b) are removed and paragraphs (c), (d), (e),

and (f) are redesignated as (a), (b), (c), and (d) respectively.

7. Sections 762.125(a)(2), (a)(3), (a)(6) and (a)(8) are revised to read as follows:

§ 762.125 Financial feasibility.

(a) * * *

(2) The loan applicant's proposed operation must project a feasible plan as defined in § 762.102(b).

(3) For standard eligible lenders, the projected income and expenses of the borrower and operation used to determine a feasible plan must be based on the loan applicant's proven record of production and financial management.

* * * * *

(6) The cash flow budget analyzed to determine a feasible plan must represent the predicted cash flow of the operating cycle.

* * * * *

(8) When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue.

* * * * *

8. Section 762.142(d)(8) is revised to read as follows:

§ 762.142 Servicing related to collateral.

* * * * *

(d) * * *

(8) The Agency approves the transfer and assumption by executing a modification of the guarantee to designate the party that assumed the guaranteed debt, the amount of debt at the time of the assumption, including interest that is being capitalized, and any new loan terms, if applicable.

* * * * *

9. Section 762.145(b)(6)(iv) is revised to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(6) * * *

(iv) The Agency will execute a modification of guarantee form to identify the new loan principal and the guaranteed portion if greater than the original loan amounts, and to waive the restriction on capitalization of interest, if applicable, to the existing guarantee documents. The modification form will be attached to the original guarantee as an addendum.

* * * * *

10. Section 762.146(e)(9) is revised to read as follows:

§ 762.146 Other servicing procedures.

* * * * *

(e) * * *

(9) The Agency approves the consolidation by executing a

modification of guarantee. The modification will indicate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.

* * * * *

11. Section 762.150(a)(1), (a)(1)(i), (b)(2), (b)(3), (b)(4) and (g)(2) are revised to read as follows:

§ 762.150 Interest assistance program.

(a) *Requests for interest assistance*. (1) To apply for interest assistance in conjunction with a new request for guarantee, the lender will submit the following:

(i) A completed cash flow budget and interest assistance needs analysis portion of the application form. Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects; however, interest assistance is only available on as many loans as necessary to achieve a feasible plan.

* * * * *

(b) * * *

(2) The lender must document that a feasible plan, as defined in § 762.102(b), is not possible without reducing the interest rate on the borrower's loan and with the debt restructured over the term of repayment.

(3) The lender must determine whether the borrower, including members of an entity, owns any significant assets that do not contribute directly to essential family living or farm operations. The lender must determine the market value of these assets and prepare a cash flow budget based on the assumption that the value of these assets will be used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for interest assistance. All interest assistance calculations will be based on the cash flow budget which assumes that the assets will be sold.

(4) A borrower's new guaranteed loan is eligible for interest assistance if all the following conditions are met:

(i) The applicant needs interest assistance in order to achieve a feasible plan.

(ii) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan, following the anticipated changes, with or without interest assistance.

(iii) If a feasible plan cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved.

* * * * *

(g) * * *

(2) The loan will be transferred with the interest assistance agreement only in cases where the transferee was liable for the debt at the time interest assistance was granted. Under no other circumstances will the interest assistance be transferred. If interest assistance is necessary for the transferee to achieve a feasible plan, the lender may request such assistance, which may be approved if interest assistance funds are available and the applicant is eligible. The maximum length of the agreement will be 10 years from the date of the first agreement covering a loan for which the transferee was liable. If interest assistance is necessary for a feasible plan and funds are not available, the request for assumption of the Agency guaranteed debt will be denied.

* * * * *

PART 1901—PROGRAM RELATED INSTRUCTIONS

12. The authority citation for part 1901 is revised to read as follows:

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

Subpart A—[Reserved]

13. Subpart A is removed and reserved.

PART 1941—OPERATING LOANS

14. The authority citation for part 1941 continues to read as follows:

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

Subpart A—Operating Loan Policies, Procedures and Authorizations

15. Section 1941.29 is amended by revising the section heading, removing paragraph (d), and revising paragraph (b) to read as follows:

§ 1941.29 Relationship between FSA loans, direct and guaranteed.

* * * * *

(b) A direct OL may be made to a guaranteed loan borrower provided the requirements of 7 CFR 761.8 and all other loan requirements are met.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

16. The authority citation for part 1943 continues to read as follows:

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

Subpart A—Direct Farm Ownership Loan Policies, Procedures and Authorizations

17. Section 1943.29 is amended by revising the section heading, removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraph (b) to read as follows:

§ 1943.29 Relationship between FSA loans, direct and guaranteed.

* * * * *

(b) A direct FO may be made to a guaranteed loan borrower provided the requirements of 7 CFR 761.8 and all other loan requirements are met.

* * * * *

18. Section 1943.79 is removed and reserved.

§ 1943.79 [Reserved]

PART 1945—EMERGENCY

19. The authority citation for part 1945 is revised to read as follows:

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

Subpart D—Emergency Loan Policies, Procedures and Authorizations

20. In § 1945.154 paragraph (a) is amended by revising the definition of “Approval official” to read as follows:

§ 1945.154 Definitions and abbreviations.

* * * * *

Approval official. An Agency official who has been delegated farm loan program loan approval authority in accordance with the title of the employee and the dollar amount of the loan as set out in tables available in any local Agency office.

* * * * *

21. Section 1945.163(e) is amended by removing the last sentence.

PART 1955—PROPERTY MANAGEMENT

22. The authority citation for part 1955 continues to read as follows:

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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

23. Section 1955.10(a)(1)(ii) is removed and reserved.

Subpart C—Disposal of Inventory Property

§ 1955.104 Authorities and responsibilities.

24. Section 1955.104(c) is removed.

PART 1965—REAL PROPERTY

25. The authority citation for part 1965 continues to read as follows:

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

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

26. Section 1965.13 is amended by removing paragraph (e)(1) and redesignating paragraphs (e)(2) and (3) as (e)(1) and (2) respectively.

§ 1965.27 Transfer of real estate security.

27. Section 1965.27(a) is removed and reserved.

Dated: January 12, 2001.

Jill Long Thompson,

Under Secretary for Rural Development.

Dated: January 12, 2001.

August Schumacher,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 01-1751 Filed 1-23-01; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-313-AD; Amendment 39-12084; AD 2001-01-13]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.