

R. 5 E.; then north to the Maricopa/Pinal County line; then east along the Maricopa/Pinal County line to the point of beginning; and

Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 5, T. 6 S., R. 3 E.; then north to the southwest corner of sec. 28, T. 5 S., R. 3 E.; then west to the southwest corner of sec. 25, T. 5 S., R. 2 E.; then north to the southwest corner of sec. 24, T. 5 S., R. 2 E.; then west to the southwest corner of sec. 23, T. 5 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 36, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 29, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 21, T. 4 S., R. 4 E.; then south to the northeast corner of sec. 4, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 3, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 22, T. 5 S., R. 4 E.; then west to the southeast corner of sec. 21, T. 5 S., R. 4 E.; then south to the point of beginning.

The following individual fields in Pinal County are regulated areas:

- 307012207
308102604
308102605
309021801
309021804
309021812
309031304
309033507
309042544
309042545
309042601
309042607
309042619
309042620
309042621
309050104
309050109
309050122
309050207
309050209

Yuma County. The following individual fields in Yuma County are regulated areas:

- 321010208
321010210
321010211
321010224
321010301
321010302
321011103
321033501
321033502
321033503
321033516
321033517

- 321033518
321033519
321040405
321040911
321040912
321040915
321040917
321040918
321040921
321040922
321041903
321041904
321041908
321041919
321042903
323030401
323030402
323030403
323030404
323030405
323030406
323030501
323030502
323030512
323030513
323030514
323030515
323030521

\* \* \* \* \*

4. In § 301.89-12, paragraph (a) is revised to read as follows:

§ 301.89-12 Cleaning and disinfection.

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt and seed conditioning equipment that has been used in the production of any host crops must be cleaned and disinfected in accordance with § 301.89-13(a) prior to movement from a regulated area.

\* \* \* \* \*

Done in Washington, DC, this 15th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-21172 Filed 8-18-00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560-AG24

Handling Payments From the Farm Service Agency (FSA) to Delinquent FSA Farm Loan Program Borrowers

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural

Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The issuing USDA agencies are revising their regulations for the use of administrative offset to collect delinquent debts due under programs formerly administered by the Farmers Home Administration (FmHA). This rule finalizes an interim rule on this subject which was published in the Federal Register on August 1, 1997. This action eliminates the provisions in the regulation setting out separate set-off regulations of the former Farmers Home Administration and provides that the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and Farm Service Agency (FSA), Farm Loan Programs (FLP) will adhere to the requirements in the United States Department of Agriculture (USDA) administrative offset regulations. This rule eliminates the requirement that a borrower's account be accelerated prior to offset of payments from a Federal agency to delinquent borrowers. This rule will improve collection procedures through an increase in the use of administrative offset to collect delinquent debts owed the Federal Government. The changes primarily affect Farm Loan Program (FLP) borrowers of the FSA. The Agencies' Federal salary offset regulations are not revised by this rule.

EFFECTIVE DATE: October 20, 2000.

FOR FURTHER INFORMATION CONTACT: Jerry P. Wishall, Senior Loan Officer, Farm Loan Programs Loan Servicing Division, USDA/FSA/LSPMD/STOP 0523, 1400 Independence Avenue, SW., Washington, D.C. 20250-0523, telephone (202) 720-1651, facsimile (202) 690-0949 or (202) 720-7686, e-mail: Jerry.Wishall@wdc.usda.fsa.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed under Executive Order 12866, has been determined to be a significant regulatory action, and has been reviewed by the Office of Management and Budget.

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs as found in the Catalog of Domestic Assistance to which this rule may apply are:

- 10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low to Moderate Income Housing Loans

- 10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
- 10.415 Rural Rental Housing Loans
- 10.417 Very Low-Income Housing Repair Loans and Grants
- 10.420 Rural Self-Help Housing Technical Assistance
- 10.421 Indian Tribes and Tribal Corporation Loans
- 10.427 Rural Rental Assistance Payments
- 10.433 Rural Housing Preservation Grants
- 10.435 Certified Mediation Program

#### Executive Order 12372

This activity is subject to provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials under the following numbers:

- 10.405 Farm Labor Housing Loans and Grants
- 10.407 Farm Ownership Loans
- 10.415 Rural Rental Housing Loans
- 10.421 Indian Tribes and Tribal Corporation Loans
- 10.427 Rural Rental Assistance Payments
- 10.433 Rural Housing Preservation Grants
- 10.435 Certified Mediation Program

The Agency has complied with the intergovernmental consultation requirements. The following programs or activities are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials, under the following numbers:

- 10.404 Emergency Loans
- 10.406 Farm Operating Loans

#### Environmental Evaluation

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, and 7 CFR part 1940, subpart G, an Environmental Impact Statement has not been prepared.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, 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 unless otherwise specifically provided in the text of the rule; and (3) administrative proceedings in accordance with 7 CFR part 11 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 economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, (5 U.S.C. 601). No actions are being taken under this rule that would favor large entities over small entities. According to the 1997 Census of Agriculture, 1.9 million farmers or over 99 percent of all farms in the United States are small entities as defined by the Small Business Administration (SBA). Under the SBA definition, few if any large entities are operators of family-sized farms who would be eligible for FSA credit. This rule is expected to result in the offset of payments from an average of approximately 4,000 borrowers per year, which is less than .2 percent of the 1.9 million small farmers. Also, this rule requires small entities to do no more than large entities to participate in the affected programs. Therefore, a Regulatory Flexibility Analysis has not been prepared.

This rule does not affect administrative offset of direct single family housing borrowers who have loans from the RHS. Administrative offsets for these borrowers was the subject of a prior rule making on November 22, 1996 (61 FR 59762). This prior rulemaking adopted the offset procedures for direct single family housing loans that are being adopted in the current rule for debts due to the Agencies.

#### Paperwork Reduction Act

The amendments to 7 CFR part 1951, subpart C, contained in this rule involve a change in existing information collection requirements that was approved by OMB under the provisions of 44 U.S.C. chapter 35 and assigned OMB control number 0575-0119. A proposed rule containing an estimate of the burden impact of this rule was published on August 30, 1996 (61 FR 45907), and updated information was published in the interim rule on August 1, 1997 (62 FR 41794). No comments on the burden estimate were received.

#### National Partnership for Reinventing Government

This regulatory action is being taken as part of the National Partnership for the Reinvention of Government to eliminate unnecessary regulations and improve those that remain in force.

#### Unfunded Mandates

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. Under section 202 of the UMRA, agencies must prepare a written statement, including a cost-benefit assessment, before promulgating a notice of proposed rule making that includes any 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, most 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, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Discussion of the Final Rule

This rule involves the credit programs formerly administered by FmHA. The Department of Agriculture Reorganization Act of 1994 authorized the Secretary to abolish FmHA and on October 20, 1994, FmHA was abolished and its functions were transferred to the USDA Agencies that are issuing the rule.

FSA took the action contained in this rule for several reasons. Most importantly, the change was made to increase the tools available to FSA's Farm Loan Programs (FSA, FLP) to collect delinquent FLP debts owed to the Government. Administrative offset was underutilized because the administrative offset regulations applicable to FSA's FLP prior to the August 1, 1997, interim rule required that a borrower's promissory note be accelerated before offset could be used to collect the debt. This resulted in the anomaly of USDA paying a delinquent debtor from one USDA program while at the same time it was trying to collect its delinquent debt. It restricted FSA's ability to collect from borrowers that defaulted on FLP debt by delaying the offset against FSA and Commodity Credit Corporation (CCC) program payments such as those derived from the Conservation Reserve Program (CRP), Production Flexibility Contracts (PFC), Livestock Indemnity Payments (LIP), Emergency Conservation Program (ECP), Environmental Quality Incentive Program (EQIP), Agriculture Conservation Program (ACP), or Stewardship Incentive Program (SIP).

Because of the procedures required for FSA to accelerate notes, a borrower's FSA loan may have been in default for years while the borrower continued to receive program payments from FSA. For example, CCC records indicate that in fiscal years 1994 and 1995, 711 CRP contract payments totaling over \$5.5 million were made to seriously delinquent FSA borrowers that were not subject to offset. It is fiscally irresponsible for a Federal agency to continue making substantial program payments to someone who is seriously delinquent on his or her Government debts.

Also, the Agencies made this change because the administrative offset provisions of the Federal Claims Collection Act (31 U.S.C. 3716) (DCA), which were amended by the Debt Collection Improvement Act (DCIA) of 1996 (Chapter 10 of Pub. L. 104-134, April 26, 1996), establish the requirement that Federal agencies must attempt administrative offset to collect delinquent debts soon after the debt becomes delinquent.

The Agencies made this change by removing a portion of the existing administrative offset regulation used by the Agencies when they were a part of FmHA. USDA has an existing administrative offset regulation at 7 CFR part 3, subpart B that satisfies the administrative offset needs of the Agencies and is consistent with the requirements of the DCA. Concerning FSA FLP borrowers, adoption of the departmental regulation and removal of the Agencies' regulation will also assist in efforts to streamline regulations and reduce paperwork by removing several pages of unnecessary regulations from chapter XVIII of the Code of Federal Regulations. This subpart contains provisions that are very similar to the previous administrative offset regulation of the former FmHA contained in 7 CFR part 1951, subpart C (1997 ed.), except it does not require a borrower's account to have been accelerated. Also, to further implement the provisions of the DCIA and the Department of Treasury regulations, "Offset of Tax Refund Payments to Collect Past-Due Legally Enforceable Nontax Debt", at 31 CFR part 285 (63 FR 46140) finalized on August 28, 1998, which require that the offset of Government payments, including Internal Revenue Service (IRS) tax refunds, be centralized in the Department of Treasury and made through the Treasury Offset Program (TOP) rather than the IRS, the Agency is removing 7 CFR 1951.121 through 1951.135.

These sections in part state that FLP borrowers will not be referred for IRS

offset until either the borrower receives the required loan servicing notices under 7 CFR part 1951, subpart S, and all appeal rights have been exhausted, or the borrower's account has been accelerated. Language has been added to 7 CFR 1951.102 and 7 CFR 1951.106(b) to clarify when offset will be used to collect the delinquent debt of an individual FSA, FLP borrower when the FSA payment is made to an entity in which the FSA, FLP borrower is participating either directly or indirectly. Offset will be taken against the individual borrower's pro rata share of payments due any entity in which the borrower participates, either directly or indirectly, or when FSA, FLP has a legally enforceable right under state law, common law, or Federal law, including USDA regulations at 7 CFR 792.7(l) and 1403.7(q), to pursue the entity payment. Situations when this may occur are when the borrower has created a shell corporation before receiving an FSA, FLP loan or after receiving a loan, established an entity, or reorganized, transferred ownership of, or otherwise changed in some manner, the borrower's operation or the operation of a related entity for the purpose of avoiding payment of the claim or otherwise avoiding Agency regulations. Offset will also be taken against the borrower's pro rata share when assets used in the entity's operation include assets pledged as security without payment to the Agency or without Agency consent to the asset transfer. When payment is to be made to a corporation, which is the alter ego of the borrower, or payment is made to the individual members of the entity which includes a delinquent borrower, pro rata offset will also be taken.

These changes reflect FSA's and CCC's farm program policies as stated in the payment regulation at 7 CFR 792.7 and 1403.7. FSA, FLP had assumed that these policies already applied to FLP individual borrowers who created entities, transferred assets, ownership or otherwise reorganized to avoid repayment of their debt. However, several appeal decisions issued by USDA's National Appeals Division (NAD) to the contrary established the need to specifically adopt the requirements contained in 7 CFR 792.7 and 1403.7 and apply them to FSA, FLP delinquent borrowers. The Agency will provide the entity with appeal rights to the NAD as to the question of the debtor's interest in the entity when offsetting the program payments of delinquent borrowers.

### Effect of National Appeals Division

Appeal rights through NAD will be offered in accordance with 7 CFR part 11 and in conjunction with the internal review process as outlined in the USDA offset regulations. The feasibility of an offset must be determined on a case-by-case basis; the practicality of the offset must be determined; borrowers must generally be given 30 days notice prior to offset, except in instances as allowed in 7 CFR part 3; a borrower has 20 days to request a meeting after receiving notice; the borrower may request a review of the offset by an Agency reviewing official, or can request an appeal through NAD, the borrower may review the Agencies records; and the borrower may reach a payment agreement with the FSA, FLP in lieu of the offset.

### Discussion of Comments Received

This final rule considers the comments received on the interim rule published August 1, 1997 (62 FR 41794), with a comment period that ended September 30, 1997. The interim rule implemented the changes in a proposed rule published on August 30, 1996 (61 FR 45907), with a comment period ending September 16, 1996. Comments for the interim rule were received from 43 parties prior to expiration of the comment period. One comment was received 1 day after the deadline and was not formally considered, although it was similar to the other comments received. Comments were received from one United States Representative, 39 banks, one lender commenting as an individual, one state banking organization, one State Department of Agriculture, and a national banking association. Two comments were identical form letters. Four comments reiterated the same comments made by the national banking association. Two commenters, a lender commenting as an individual and a bank, praised the Agencies' efforts to collect from delinquent borrowers. They believe more aggressive collection action would help curb abuse of farm loans by farmers and bankers. They also believe that the Government should cease subsidizing bad or unlucky farmers; that bankers should not collateralize loans with Government subsidies; and that borrowers should be required to repay their loans. One commenter did not have a problem with FSA offsetting Government payments ahead of an assignment to a lender as this was no different than a mechanic's lien superseding a lien.

The respondents' comments are addressed as follows in an order based on the volume of responses received. Comments of a similar topic are grouped, paraphrased and addressed as one. General comments received regarding constitutionality, ethics, fairness and the general mission of the Agencies loan programs were considered and may be addressed in context.

#### **Adverse Effect on Agriculture Lending Community and Restriction of Credit**

Thirty comments were received from private lenders and banking organizations expressing concern about the potential negative impact of this rule due to a reduced availability of bank credit. These commenters indicated that this rule will result in a restriction on loans to farmers for the production of crops because many of these loans are dependent upon assignment of FSA program payments for repayment. The respondents suggest that a lender will deny credit to a farm borrower due to inadequate cash flow as a result of not being able to include FSA program payments in their annual cash flow projections. Commenters requested that the Agency honor an assignment or abide by Uniform Commercial Code (UCC) lien priorities on payments, regardless of the legal status of the borrower's government loan. Respondents suggested that if the Agency proceeds with this change, FSA, FLP should inform creditors and suppliers of the status of an FSA, FLP borrower's loans. Many of these commenters recommended the assignments be honored for at least the 1997 crop year.

One commenter indicated an inability to verify status of FSA loans. FSA is in the process of amending its credit reporting procedures to conform more closely to those in the commercial and consumer lending community by reporting delinquent farm loan program borrowers to credit reporting bureaus in accordance with the requirements of the DCA. This will reduce the likelihood of a lender extending credit without knowledge of the status of a borrower's FSA loan. In the case of a borrower who is current on his or her FSA, FLP loan, this rule is not likely to affect their ability to obtain credit.

Seventeen commenters indicated that the offsets would reduce the availability of guaranteed loans to a borrower who has a direct FSA, FLP loan. FSA, FLP's guaranteed loan program, which guarantees a lender against up to 90 percent of any loss of principal and interest, may be used by lenders to reduce their risk. This program requires

a positive cash flow considering all income sources and debt payments. As stated by several commenters, FSA typically requires lenders to take an assignment of farm program payments; but we expect few, if any, loans to be approved with FSA income enhancement program payments as the sole planned source of repayment. If the borrower becomes delinquent on a direct loan and the payment is offset, there is authority to assist the borrower by servicing the guaranteed loan under one or more of the authorities contained in 7 CFR part 762.

With regard to assignments, lien position, and bankruptcy, this rule changes little. Administrative offset has been available and utilized for many years and the assignment forms which have been used by FSA have provided that offset to the Government has priority over an assignment to a lender. See 7 CFR 792.8 and 1403.8. Under this rule, the Government will continue to have priority over an assignment to a lender or supplier. In the case of bankruptcy, all creditor collection actions cease and the court will determine the uses of income, distribution of security and disposition of debt. In any event, the DCA requires non-tax accounts over 180 days delinquent to be forwarded to the Department of Treasury for offset, notwithstanding the action of FSA, FLP.

Aside from reporting to credit bureaus, FSA, FLP will not automatically inform another lender that a borrower has become delinquent on a loan as requested by commenters. This notification would be inconsistent with the requirements of the Privacy Act (5 U.S.C. 552(a)) unless FSA has specific approval from its borrower to release this information. However, as a result of farm visits and other routine servicing of the loan, it is likely that a lender that has extended operating credit will be aware of repayment problems that may result from a decline in production and the related risk of administrative offset. A natural disaster or unforeseen drop in sales would require a joint effort from all creditors. In addition, the occurrence of a natural disaster or financial disasters may allow FSA to use other FSA, FLP loan servicing authorities to correct the delinquency and maintain the operation.

Under 31 U.S.C. 3720B(a), a person is precluded from obtaining any Federal financial assistance, including USDA assistance in the form of a loan (other than an emergency loan), loan insurance, or a loan guarantee, while that person is delinquent on a non-tax Federal debt, unless the Secretary of Agriculture or a designee waives this

prohibition. If FSA, FLP finds that the increased use of administrative offset makes it more difficult for agricultural producers to obtain loans, it will review this action.

Two commenters stated the FSA, FLP should abide by 7 CFR 1962.17 and releases of normal income security should be made ahead of offsets. Administrative offset and releases for essential family living and farm operating expenses are separate issues and the requirements of 7 CFR 1962.17 are not affected by this change. FSA program payments will be administratively offset prior to acceleration of the loan. However, offset is not the exercise of collection from FSA, FLP loan security. Offset is the administrative collection of an FSA, FLP debt due from funds due the borrower under another Government program. FSA may or may not have a security interest in that payment or may or may not have a first lien interest therein. FSA and CCC payments are not subject to attachment, garnishment or lien interest until paid. Offset intercepts these payments before they are made and before they are subject to any lien. The amounts when obtained are not normal income security and are not subject to the release provisions in 7 CFR 1962.17.

Two respondents stated that if FSA, FLP had agreed to release program payments on Form FHA 1962-1, Agreement for the Use of Proceeds/Release of Chattel Security, the Agency cannot alter this agreement. Funds obtained through administrative offset are not the result of the Government's foreclosure on or otherwise seizing security.

At least two respondents commented that the Agency should attempt to correct a delinquency under 7 CFR part 1951, subpart S, prior to administrative offset. This comment is similar to others who suggested that the Agency more clearly define "past due" and not send the notice of intent to collect by administrative offset until the borrower is at least 90 days or up to 180 days past due. Notification requirements for administrative offset are separate from those of debt restructuring. When the required procedure has been completed, FSA, FLP has made the policy determination in accordance with the DCA that administrative offset will be taken regardless of the status of any request for servicing under the provisions of 7 CFR part 1951, subpart S.

However, the comment that requested that borrowers be allowed to become at least 90 days or up to 180 days past due before offsetting a payment was

considered. As a practical matter the issuance of a Notice of Intent to Collect by Administrative Offset will normally correspond to the commenter's request for at least a 90-day delay. Notice of offset will not generally occur until notice under 331D of the Consolidated Farm and Rural Development Act (Con Act), 7 U.S.C. 1981d, has been provided. The FSA, FLP administrative requirements will provide for the Notice to be sent simultaneously with or subsequent to the notice required by 331D of the Con Act. Because most FSA loan payments are due annually from January to May, if the recommendation that the Agency not begin offset procedures until the borrower is 180 days past due were adopted any FSA program payments made through at least June of every year would not be subject to offset on newly delinquent accounts. FSA could not wait until the expiration of the 180-day period and be consistent with the intent of the DCA, which requires that all FSA, FLP servicing be completed and debts be referred to the Department of Treasury as soon as possible after the account is 180 days past due. See 63 FR 16356, April 2, 1998, entitled "Transfer of Debts to Treasury for Collection." Therefore, this recommendation was not adopted.

Other miscellaneous comments were received that could be paraphrased as general opposition to the proposal. At least four commenters suggested that this change is not required to expedite administrative offset. They indicated that the Agency's loan servicing and appeal regulations have required timeframes for actions that, if properly followed, would result in account acceleration much earlier than the months or years cited in the proposed rule. FSA agrees that employee delay may be a factor in cases of extended loan servicing. However, even if every timeframe contained in regulations is precisely followed, the result would be that acceleration was delayed long enough to allow a seriously delinquent borrower to obtain several payments before offset could be put into place. Therefore, the agencies did not adopt this comment.

#### List of Subjects in 7 CFR Part 1951

Accounting, Accounting servicing, Credit, Loan programs—Agriculture, Low and moderate income housing loans—Servicing.

Accordingly, for the reasons stated in the preamble, the interim rule published on August 1, 1997 (62 FR 41794), is adopted as a final rule with the following changes:

### PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; and 42 U.S.C. 1480.

#### Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

2. Revise § 1951.101 to read as follows:

##### § 1951.101 General.

Federal debt collection statutes provide for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utilities Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to collectively as "United States Department of Agriculture (USDA) Agency", to collect delinquent debts. Any money that is or may become payable from the United States to an individual or entity indebted to a USDA Agency or other individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to RHS direct single family housing loans. Nothing in this subpart affects the agency's common law right of set off.

3. Revise § 1951.102 to read as follows:

##### § 1951.102 Administrative offset.

(a) *General.* Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart B and § 1951.106.

(b) *Definitions.* In this subpart:

(1) *Agency* means Farm Service Agency, Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service, or any successor agency.

(2) *Contracting officer* is any person who, by appointment in accordance with applicable regulations, has the

authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of the representative's authority.

(3) *County Committee* means the local committee elected by farmers in the county, as authorized by the Soil Conservation and Domestic Allotment Act and the Department of Agriculture Reorganization Act of 1994, to administer FSA programs approved for the county as appropriate.

(4) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(5) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(6) *Delinquent* means a payment that has not been paid within 30 calendar days after the due date.

(7) *Entity* means a corporation, joint stock company, association, general partnership, limited partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization participating in the farming operation.

(8) *FP* means Farm Programs.

(9) *FLP* means Farm Loan Programs.

(10) *FSA* means Farm Service Agency.

(11) *National Appeals Division* means the organization within the Department of Agriculture that conducts appeals of adverse decisions for program participants under the purview of 7 CFR part 11.

(12) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and transfers the funds to the creditor agency for application to the debt.

(13) *Propriety* means the offset is feasible. It includes offsetting a debtor's payments due any entity in which the debtor participates either directly or indirectly equal to the debtor's interest in the entity. To be feasible the debt must exist and be 60 days delinquent or past due for 90 days or the borrower must be in default of other obligations to the Agency, which can be cured by the payment of money.

(14) *Reviewing officer* means an agency employee responsible for conducting a hearing or documentary review on the existence of debt and the propriety of administrative offset in accordance with 7 CFR 3.29. FSA District Directors or other State Executive Director designees are

designated to conduct the hearings or reviews.

4. Add § 1951.106 to read as follows:

**§ 1951.106 Offset of payments to entities related to debtors.**

(a) *General.* Collections of delinquent debts through administrative offset will be in accordance with 7 CFR part 3, subpart B, and paragraphs (b) and (c) of this section.

(b) *Offsetting entities.* Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

(1) It is determined that FSA has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(l) and 1403.7(q), to pursue the entity payment;

(2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;

(3) Assets used in the entity's operation include assets pledged as security to the Agency which have been transferred to the entity without payment to the Agency of the value of the security or Agency consent to transfer of the assets;

(4) A corporation to which a payment is due is the alter ego of a debtor; or

(5) A debtor participates in, either directly or indirectly, the entity as determined by FSA.

(c) *Other remedies.* Nothing in this section shall be deemed to limit remedies otherwise available to the Agency under other applicable law.

5. Revise the introductory text and paragraph (b)(1) in § 1951.111 to read as follows:

**§ 1951.111 Salary offset.**

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of Federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquent debts owed to them by employees of the USDA Agency, excluding county committee members. Administrative offset, rather than salary

offset, will be used to collect money from Federal employee retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for Farm Loan Programs loans, salary offset will not be instituted if the Federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount against an employee's salary.

\* \* \* \* \*

(b) \* \* \*

(1) *Certifying Officials.*—State Directors; State Executive Directors; the Assistant Administrator; Finance Office; Financial Management Director; Financial Management Division, and the Deputy Administrator for Management, National Office.

\* \* \* \* \*

**§§ 1951.121 through 1951.135 [Removed and Reserved]**

6. Sections 1951.121 through 1951.135 are removed and reserved.

Signed in Washington, D.C., on August 8, 2000.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

Dated: August 13, 2000.

**Jill Long Thompson,**

*Under Secretary for Rural Development.*

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 94**

[Docket No. 98-094-2]

**Poultry Products From Mexico Transiting the United States**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations for importing poultry products to allow poultry carcasses, parts, and products (except eggs and egg products) that are not eligible for entry into the United States to move through the United States via land ports from Mexican States that Mexico considers to be free of exotic Newcastle disease (END), under certain conditions, for export to another country. We believe such in-transit movements present a negligible risk of introducing END into the United States. This action relieves restrictions on trade while continuing to provide protection against the introduction of END into the United States.

**EFFECTIVE DATE:** September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 734-8364.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. The regulations in § 94.6 govern, among other things, the importation of poultry carcasses, parts, products, and eggs (other than hatching eggs) from regions where exotic Newcastle disease (END) or *Salmonella enteritidis*, phage-type 4, is considered to exist. Because END exists in certain parts of Mexico, Mexico is characterized, under § 94.6(a), as a region where END is considered to exist. Further, under the regulations in § 94.6(b), Mexico is also characterized as a region where *S. enteritidis*, phage-type 4, is considered to exist.

Poultry carcasses and parts and products of poultry carcasses from most parts of Mexico may be imported into the United States only in accordance with § 94.6. Section 94.6 requires the carcasses or parts and products to be cooked prior to importation or to be consigned directly to an approved establishment in the United States. Under the regulations in § 94.22, poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora may be imported into the United States under less restrictive conditions because these States are considered low risk for END. Section 94.6 provides that poultry eggs (other than hatching eggs) from Mexico may be imported into the United States only if: (1) They are