

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 762

RIN 0560-AG44

#### Collecting Guaranteed Loss Payments From FSA Farm Loan Program Borrowers

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action revises the regulations governing the Farm Service Agency's (FSA) guaranteed farm loan programs by adding a provision clarifying that any amounts paid by FSA on account of the liabilities of the guaranteed loan borrower will constitute a Federal debt owing to FSA by the guaranteed loan borrower. FSA may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower. This action will affect only those guaranteed loan borrowers after a final loss claim is paid by FSA to the lender from whom they received a guaranteed loan.

**DATES:** This rule is effective on July 1, 2002.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic

effect on a substantial number of small entities, because it does not require actions on the part of the borrower or the lenders. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96-534, as amended (5 U.S.C. 601). This rule does not impact small entities to a greater extent than large entities.

##### 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, Pub. L. 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 Agency servicing under this rule will apply to loans guaranteed prior to the effective date of the rule and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

##### Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) 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.

##### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, 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

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consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined by title II of the UMRA, 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.

##### Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

##### Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560-0155.

##### 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 clarifies the policy of the Farm Service Agency Farm Loan Programs concerning the statutory mandate imposed on the Agency by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3716) (DCIA). Section 3701 of 31 U.S.C. defines "claim" or "debt" in part to include funds owed on account of loans guaranteed by the government. This rule puts guaranteed borrowers on notice that FSA will attempt to collect from guaranteed borrowers through Treasury Offset and any other available remedies when a final loss claim is paid to a guaranteed lender.

The Federal Claims Collection Act of 1966 (Act), (31 U.S.C. 3711 et seq.) provides for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by Government agencies to collect delinquent Federal debts. Any money that is or may become payable

from the United States to an individual or entity indebted to FSA may be offset for the collection of a debt owed to FSA. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the 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. Current regulations published in 7 CFR part 762, do not discuss whether amounts paid by the Agency on guaranteed final loss claims are considered Federal debts.

This rule is consistent with the Act and clarifies that a Federal debt is established when a guaranteed final loss claim is paid. The Agency will offset all payments available in accordance with 31 U.S.C. 3716 and 7 CFR part 1951, subpart C. Federal Crop Insurance indemnity payments are prohibited from offset under section 509 of the Federal Crop Insurance Act (7 U.S.C. 1509). FSA also will not offset environmental cost-share assistance payments for establishment costs that are made for newly enrolled FSA Conservation Reserve Program acres or in other situations not in the best interests of the Government. FSA's current policy for direct loan debt collections will be used for collection of Federal debt arising from guaranteed loans.

Some borrowers have established corporations, partnerships and other entities to avoid offsets and to circumvent other Agency regulations. Offset will be taken against the borrower's pro rata share of entity payments pursuant to 7 CFR 792.7(l), 1403.7(q), and 1951.106. A Federal debt cannot be established on debts discharged in bankruptcy. In a reorganization bankruptcy, a borrower will not be offset even when a final loss claim is paid provided the borrower successfully completes the confirmed plan. If a borrower's debt is discharged in a Chapter 7 bankruptcy, offset will not be pursued when the final loss claim is paid.

The Agency has revised its guaranteed loan application forms to include the applicant's certification and acknowledgment that any amounts paid by FSA on account of liabilities of the guaranteed loan borrower will constitute a Federal debt to FSA. The forms provide direct notice to interested applicants of FSA's debt collection policy and memorialize their understanding and acknowledgment of FSA's collection policy.

The guaranteed farm loan program has been in existence since 1973. Currently, there are 40,559 guaranteed

farm loan borrowers with 67,540 loans. Approximately 1,200 loss claims are paid on guaranteed loans per year. Approximately 100 of the 1,200 loans are discharged in bankruptcy, leaving about 1,100 loans that could be considered for offset and other collection methods. Sixty days after a final loss claim is paid, Agency loan officials will notify the guaranteed borrowers with a Notice of Intent to Collect by Administrative Offset that any FSA payment that they may be scheduled to receive will be offset. The notice will advise such borrowers of their options to either pay the claim off, relinquish some or all of the payment to FSA, or seek administrative review or appeal.

This rule is not published for notice and comment because it implements statutory and regulatory provisions which are binding on the Agency. Since the Agency does not have discretion in this matter, public comment would not be able to affect the provisions of the rule. Therefore the rule is published as final and effective upon publication.

#### List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—Agriculture.

Accordingly, 7 CFR chapter VII is 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.

2. Amend § 762.149 by adding paragraph (m), to read as follows:

##### § 762.149 Liquidation.

\* \* \* \* \*

(m) *Establishment of Federal debt.* Any amounts paid by the Agency on account of liabilities of the guaranteed loan borrower will constitute a Federal debt owing to the Agency by the guaranteed loan borrower. In such case, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date the final loss claim is paid.

Signed in Washington, DC, on June 25, 2002.

**James R. Little,**  
Administrator, Farm Service Agency.

[FR Doc. 02-16474 Filed 6-28-02; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Part 94

[Docket No. 02-068-1]

##### Change in Disease Status of Poland Because of BSE

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations by adding Poland to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that region. Poland has been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants, meat, meat products, and certain other products of ruminants that have been in Poland. This action is necessary in order to update the disease status of Poland regarding bovine spongiform encephalopathy.

**DATES:** This interim rule was effective May 5, 2002. We will consider all comments that we receive on or before August 30, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-068-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-068-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-068-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

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