

# Rules and Regulations

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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.

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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-AE98

#### Disaster Set-Aside Program—Second Installment Set-Aside

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

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

**SUMMARY:** The Farm Service Agency (FSA) is amending the disaster set-aside program requirements to allow a second installment to be set-aside for borrowers affected by a natural disaster in a county declared a major disaster or emergency by the President between January 1, 1997 and August 1, 1997. The impact of these provisions will allow the agency to service disaster victims in an efficient and timely manner while keeping them in business.

**DATES:** Effective August 1, 1997. Comments must be submitted by September 30, 1997.

**ADDRESSES:** Submit written comments to Director, Farm Loan Programs Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW, Washington DC 20250-0523.

**FOR FURTHER INFORMATION CONTACT:** Kimberly R. Laris, Senior Loan Officer, Farm Service Agency, U.S. Department of Agriculture, Stop 0523, 1400 Independence Avenue, SW, Washington, D.C. 20250-0523;

Telephone: 202-720-1659; Facsimile: 202-690-0949, e-mail: klaris@usda.fsa.gov.

#### 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 issuing agencies certify that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601). Amendments included in this rule will not impact small entities to a greater extent than large entities or individual farm borrowers.

##### 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 interim rule has been reviewed under 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; (3) 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.

##### Executive Order 12372

For reasons set forth in the notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

##### 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. When such a statement is needed for a rule, section 205 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. When such a statement is needed for a rule, section 205 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.

##### Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0560-0164 through August 31, 1998. The amendments set forth in this interim rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

##### Federal Assistance Programs

10.404—Emergency Loans  
10.406—Farm Operating Loans  
10.407—Farm Ownership Loans  
10.416—Soil and Water Loans

##### Discussion of the Interim Rule

FSA publishes this amendment to subpart T of part 1951 without prior notice and comment because of the emergency nature of the program and the eligibility requirements involved. Publication as a proposed rule for notice and comment is impractical and contrary to the public interest. The Disaster Set-Aside (DSA) program was first made available to FSA Farm Loan Programs (FLP) borrowers beginning October 21, 1994, because of the heavy flooding in the Midwest and extreme

drought in the South. Since that time, approximately 12,000 borrowers have received DSA assistance. The overall success of the program can be attributed to the small amount of paperwork required in applying and processing DSA requests. DSA gives FLP borrowers a chance to recover from their losses without having to incur additional debt to pay creditors or liquidate essential assets. The cost to the government is substantially less under this servicing program than any other servicing program as no debt is written off, no appraisal costs are incurred as under subpart S of part 1951, and no liquidation costs are incurred.

Many of the borrowers who received DSA in 1994 and 1995 were again affected by heavy snowfall and flooding in the Midwest during the beginning months of 1997. The President has declared the majority of North Dakota, South Dakota, and Minnesota as a disaster area. Many of these borrowers have received a previous writedown of debt under subpart S of part 1951, thereby making them ineligible for additional writeoffs or emergency loans as a result of § 373 of the Consolidated Farm and Rural Development Act. The expansion of the program to permit a second debt set-aside, therefore, is needed immediately to benefit these disaster victims. While there is justification for the rule to become effective 10 days after publication, FSA will accept public comments on the rule for 60 days.

The existing regulations provide that each loan can only have one set-aside installment outstanding. The only way a borrower could receive DSA again, would be if the previous set-aside installment were paid in full, or cancelled through restructuring under subpart S of part 1951. This rule will allow borrowers, who were affected by a natural disaster in a county declared a major disaster or emergency by the President between January 1, 1997 and August 1, 1997, to receive a second installment set-aside without having to pay in full the first set-aside installment, or cancel the set-aside altogether. Borrowers who farmed in counties contiguous to the county that was declared a disaster area are not eligible for the second installment set-aside unless they also farmed in the county declared a disaster area and meet all the eligibility requirements. This rule will allow such borrowers to receive immediate financial relief from their FLP obligations in a more expedient manner than under subpart S of part 1951.

If the borrower pays any portion of the set-aside installments in the future,

the payment will be applied to the oldest installment set-aside first.

Borrowers affected by a disaster declared by the President prior to the effective date of this rule will have 6 months from the date they are notified of the program to apply for a second installment set-aside.

The notification requirements described in section 1951.953 are also being amended in FSA's internal instructions to require notification of DSA assistance quarterly instead of each time an area is designated a disaster area. The notification would include a list of all designations outstanding, including those received during the preceding quarter. This will eliminate a lot of confusion as well as provide a reminder to the borrower of any outstanding declarations to apply for DSA and emergency loans.

A clarification is also being made to § 1951.954(b)(4). The amount that can be set-aside was limited to the amount the borrower was unable to pay FSA from the production marketing period in which the disaster occurred, or the amount the borrower was unable to pay other creditors and expenses, rounded up to the nearest whole installment. This was misleading. The other creditors and expenses do not come into play unless the FLP installment was paid. As written, this would make borrowers ineligible to receive DSA if the lesser amount due other creditors was less than their FLP installment since section 1951.954(a)(6) requires all FLP installments to be current after the scheduled installments are set-aside. In this case, all FLP installments would not be current if the total of the FLP installments was less than the other creditors payments. The provision has been clarified to state that if the installment due immediately after the disaster was paid, but other creditors and expenses were not, the amount set-aside will be the lesser of the amount the borrower is unable to pay other creditors and expenses, rounded up to the nearest whole FLP installment, or the next FLP installment due.

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

Accounting, Credit, Disaster assistance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing.

Accordingly, part 1951 Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

**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, 42 U.S.C. 1480.

**Subpart T—Disaster Set-Aside Program**

2. Section 1951.953 is amended by removing and reserving paragraph (a) and by revising paragraph (b) to read as follows:

**§ 1951.953 Notification and request for DSA.**

\* \* \* \* \*

(b) *Deadline to apply.* All FLP borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, except borrowers applying for a second installment set-aside for disasters declared by the President between January 1, 1997 and August 1, 1997, have 6 months from the date of the notification letter to apply. Borrowers may only be considered for DSA one time for each disaster.

\* \* \* \* \*

3. Section 1951.954 is amended in paragraph (a)(1) by adding a sentence at the end of the paragraph and revising (b)(2) and (b)(4) to read as follows:

**§ 1951.954 Eligibility and loan limitation requirements.**

(a) \* \* \*

(1) \* \* \* If the borrower is applying for a second installment to be set-aside, the disaster area operated must have been in a county declared a major disaster or emergency by the President between January 1, 1997 and August 1, 1997.

\* \* \* \* \*

(b) \* \* \*

(2) Only one unpaid installment for each farm loan may be set-aside. Except for Presidential disaster declarations between January 1, 1997 and August 1, 1997, if there is an installment still set-aside from a previous disaster, the loan is not eligible for DSA. For Presidential declarations between January 1, 1997 and August 1, 1997, borrowers who already have one installment set-aside from a previous disaster may set-aside a second installment. If the set-aside is later paid in full, or cancelled through restructuring under subpart S of this part, the set-aside will no longer exist and, therefore, the loan may be considered for Disaster Set-Aside (DSA) in the future.

(3) \* \* \*

(4) The amount set-aside shall be limited to the amount the borrower is

unable to pay Farm Service Agency (FSA) from the production and marketing period in which the disaster occurred. However, if the installment due immediately after the disaster was paid, but other creditors and expenses were not, the amount set-aside will be the lesser of the amount the borrower is unable to pay other creditors and expenses, rounded up to the nearest whole installment, or the next installment due. Expenses which the borrower is unable to pay may include the following year's operating and family living expenses if the income or commodities lost from the disaster year would have been used for these purposes, or if normal income security from the disaster year is approved for release under subpart A of 7 CFR part 1962 or otherwise authorized under subpart B of 7 CFR part 1924 for these purposes. Under no circumstances will a portion of the installment be set-aside leaving a balance still due. The portion not set-aside must be paid by the borrower on or before the date Exhibit A of FmHA Instruction 1951-T (available in any FSA office) is signed.

\* \* \* \* \*

4. Section 1951.957 is amended by revising paragraph (b)(7) to read as follows:

**§ 1951.957 Eligibility determination and processing.**

\* \* \* \* \*

(b) \* \* \*

(7) Payments applied to the amount set-aside will be applied first to interest and then to principal. If more than one installment is set-aside on the loan, payments will be applied to the oldest installment set-aside until paid in full, before applying payments to the second installment set-aside.

\* \* \* \* \*

Signed at Washington, D.C., on July 22, 1997.

**James W. Schroeder,**  
Acting Under Secretary for Farm and Foreign Agricultural Services.  
[FR Doc. 97-20280 Filed 7-31-97; 8:45 am]  
BILLING CODE 3410-05-P

**FARM CREDIT ADMINISTRATION**

**12 CFR Part 602**

**RIN 3052-AB77**

**Releasing Information**

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA or Agency), through the FCA Board, issues a final

rule amending its regulations governing the release of information. The objective of this action is to conform applicable FCA regulations to the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996 (1996 Amendments), Pub. L. 104-231, and to clarify the address of the FCA official who receives FOIA requests for records.

**DATES:** The regulation shall become effective October 2, 1997, or upon the expiration of 30 days after publication during which either or both Houses of Congress are in session, whichever is later. A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

John Hays, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or  
Jane Virga, Senior Attorney, Legal Counsel Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** Through the Electronic Freedom of Information Act Amendments of 1996, Congress amended the FOIA to address, among other things, the timing of agency responses to FOIA requests. The FOIA was amended to increase the time limit for agency responses from 10 to 20 working days. Another time-related amendment requires agencies to promulgate regulations under which requests for expedited processing will be considered and to grant such requests upon a showing of a compelling need. These amendments are effective October 2, 1997.

In response to the amendment of the FOIA, the FCA is amending its regulations at part 602, subpart B, as a final rule. The amendments to part 602, subpart B, reflect the requirements of the FOIA, as amended, and are not interpretative. The 1996 Amendments provide Federal agencies with no discretion and require the time-related amendments to be effective on October 2, 1997. Moreover, the regulations that the FCA adopts to implement the 1996 Amendments and to clarify the address of the Freedom of Information Officer are ministerial, minor, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and comments for this regulation are unnecessary, impractical,

and contrary to the public interest, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(a)(3)(B).

Sections 602.260 and 602.261(a) and (d) are amended to reflect that the Agency will have 20 days within which to respond to FOIA requests for records. Section 602.260 is also amended to provide that FOIA requests for records should be addressed to the Freedom of Information Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

Finally, the FCA has added new § 602.261(e) to address the new requirement that the Agency promulgate regulations concerning the granting of a request for expedited processing of a FOIA request upon a requester's showing of a compelling need for the information. The new regulation requires the Freedom of Information Officer to notify a requester within 10 calendar days after receipt of such a request whether the Agency granted expedited processing and, if so, to process the request as soon as practicable. The regulation defines "compelling need" to mean that a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, with respect to a request made by a person primarily engaged in disseminating information, that there is an urgency to inform the public concerning actual or alleged Federal Government activity. The regulation further provides that a requester demonstrate a compelling need by a statement certified by the requester to be true and correct to the best of such person's knowledge and belief. The procedures for expedited processing apply to both requests for information and to administrative appeals.

The remaining provisions of the 1996 Amendments to the FOIA do not require amendment of the FCA's regulations governing the release of information at part 602.

**List of Subjects in 12 CFR Part 602**

Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, part 602 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

**PART 602—RELEASING INFORMATION**

1. The authority citation for part 602 is revised to read as follows:

**Authority:** Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C.