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DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 1951

RIN 0560-AF80

Suspension of Collection of Recapture Amount for Borrowers With Certain Shared Appreciation Agreements

AGENCY: Farm Service Agency, USDA.
ACTION: Interim rule.

SUMMARY: The Farm Service Agency (FSA) is amending the shared appreciation agreement requirements to allow certain Farm Loan Program (FLP) borrowers with such agreements that end prior to December 31, 2000, to have the obligation to pay all or part of the recapture amount due under the agreement suspended for up to 3 years. This rule will allow those borrowers to suspend their obligation to pay the recapture amount to give them time to recover from the current situation of depressed commodity prices.

DATES: Effective April 23, 1999. Comments on this rule and on the information collections must be submitted by June 22, 1999 to be assured consideration.

ADDRESSES: Submit written comments to the 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: David Spillman, Branch Chief, or Veldon Hall, telephone (202) 720-0900; electronic mail: david__spillman@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 and 602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis is not required and was not performed.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agency has determined that this action does not 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 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 because it will not affect agreements, entered into prior to the effective date of the rule, to pay the shared appreciation amount due under a shared appreciation agreement; and (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. This rule will only allow certain borrowers who are obligated to pay a sum certain at the maturity date of the shared appreciation agreement to delay that payment.

Executive Order 12372

For reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded

from the scope of E.O. 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, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or 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 requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures 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.

This rule contains no Federal mandates, as defined under 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 of 1995

The amendments to 7 CFR part 1951 set forth in this interim rule require a revision to the information collection requirements that were previously approved by OMB under the provisions of chapter 35 of title 44 of the United States Code. Since this interim rule will be effective as soon as it is published, FSA has submitted a request for emergency approval of the information collections of this rule to OMB. Still, the agency is seeking public comments on the information collection estimates and subsequent revisions may be made based on the comments received.

Title: 7 CFR 1951-S, Farmer Program Account Servicing Policies.

OMB Control Number: 0560-0161.

Expiration Date of Approval: March 31, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collected under OMB Number 0560-0161, as identified above, is needed for FSA to effectively administer the regulations relating to the servicing of delinquent

direct FSA farm loans. The information is collected by the loan official in order to document the borrower's eligibility for specific loan servicing actions. The reporting requirements imposed on the public by the regulations contained in 7 CFR part 1951-S are necessary to administer the loan program in accordance with statutory requirements, are consistent with commonly performed lending practices, and are necessary to protect the Government's financial interest.

This rule, which provides for the suspension of the borrower's obligation to pay the recapture payment due under a shared appreciation agreement in 1999 and 2000, will result in an information collection burden for borrower's seeking such a suspension. Each borrower who wishes to suspend a recapture payment obligation will be required to request a suspension, read and sign a suspension agreement, and provide cash flow projections documenting that they are unable to pay for 2 years subsequent to the suspension. The revision to the information collection requirements approved under 0560-0161 also requests approval of an existing requirement associated with this program. The currently approved information collection contains no burden estimates for the information collection requirements contained in 7 CFR 1951.914(e). Specifically, paragraphs 1951.914(e)(1) and (8) require a borrower that wishes to amortize the recapture due to present a feasible plan documenting their ability to pay the recapture in installments plus interest and to execute a promissory note for the amount due.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.51 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 9,453.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14,309 hours.

Proposed topics for comment include:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to David Spillman, Branch Chief, USDA, FSA, Farm Loan Programs Loan Servicing Division, Farm Service Agency, USDA, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20250-0523. A copy and explanation of the information collection requirements of this rule may be obtained from Mr. Spillman at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance.

10.407—Farm Ownership Loans

Discussion of the Interim Rule

The Farm Service Agency (FSA) publishes this amendment to subpart S of part 1951 for immediate effect 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 as discussed below.

In late 1988, the Agricultural Credit Act of 1987 amended § 353 of the Consolidated Farm and Rural Development Act (Con Act) by inserting subsection (e) (7 U.S.C. 2001(e)) to allow the Farmers Home Administration (which later became part of FSA), to begin restructuring debts with debt write-downs and entering into shared appreciation agreements with borrowers. Under these agreements, a borrower is required to make a recapture payment equal to a specified portion of any appreciation in the value of the real estate between the date of the agreement and the earlier of the following dates: (1) The date the real estate securing the borrower's loan with the agency is sold, (2) the repayment of the loan, (3) the date the borrower ceases farming operations, or (4) the date 10 years after the borrower and the agency entered into the agreement. The recapture payment is 75% of the appreciation in the case of agreements that lasted 4 years or less and 50% of the

appreciation in the case of all other agreements.

Many of these agreements have now matured. However, the prices for many agricultural commodities for the 1998 crop are at depressed levels. Such depressed prices are expected to continue for at least another year. In certain cases, the prices farmers are receiving for the agricultural commodities they produce have fallen by more than 50% over the last 3 years. This situation has led to a substantial fall in farm income across nearly all sectors of production agriculture. Thus, a significant percentage of the approximately 3,300 borrowers with shared appreciation agreements that are coming to an end during the 1999 and 2000 calendar years are not able to repay the recapture amounts.

This rule will allow those borrowers to suspend their obligation to pay the recapture amount to give them time to recover from the current situation of depressed commodity prices. Accordingly, there is a good cause to make the rule effective immediately upon publication. FSA will accept public comments on the rule for 60 days after publication in the **Federal Register**.

The shared appreciation agreement regulations codified at 7 CFR 1951.914, generally provide the procedures for the servicing of shared appreciation agreements, including the procedure for determining and collecting recapture amount of any appreciation in the secured real estate.

The rule would amend the regulation by adding paragraph (h) to give a borrower with a shared appreciation agreement that becomes due on or before December 31, 2000, provided there has been no agreement for payment of the recapture amount, a period of 30 days to apply for a 1 year suspension of the borrower's obligation to pay the recapture amount if the borrower certifies in writing the inability to pay the recapture amount. In order to protect the Government's lien position, FSA must determine that its mortgage on the secured real estate will not expire prior to the end of the suspension period plus an additional 3 years, or FSA must be advised that under State law the mortgage can be extended for an additional 3 years.

A suspension may be renewed twice. At each renewal, the borrower will receive a suspension limited to the portion of the recapture amount FSA determines, based on a Farm and Home Plan, that the borrower is still unable to pay at the time of the renewal request. The amount of the recapture payment subject to a suspension will accrue

interest at a rate equal to the applicable Federal borrowing interest rate, as determined by the FSA Administrator.

Thirty days before the suspension period FSA will notify the borrower that the suspension of the shared appreciation agreement will end in the near future. This notification is separate and apart from the notification required by § 807 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act). Section 807 of the 1999 Appropriations Act requires FSA, beginning in fiscal year 2000, to send an FLP borrower notice of the provisions of the agreement not later than 12 months before the end of the term of a shared appreciation agreement. Under additional FSA procedures all borrowers whose agreements were due, even if the payment obligation is suspended, were notified of the agreements' provisions in the timeframe required by § 807. The requirement in this regulation that borrowers be notified 30 days before the end of the suspension is not intended to apply under § 807 of the 1999 Appropriations Act.

If the real estate is conveyed during the suspension period, the recapture amount plus any applicable interest will become immediately due and payable under the notice procedures explained in the notice to the borrowers.

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Loan programs—agriculture.

Accordingly, 7 CFR part 1951 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; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart S—Farmer Program Account Servicing Policies

2. Section 1951.914 is amended by revising the heading and introductory text of paragraph (b) and by adding paragraph (h) to read as follows:

§ 1951.914 Servicing of accounts restructured under Primary Loan Service Program.

* * * * *

(b) *Recapture under Shared Appreciation Agreements.* Except as provided in paragraph (h), recapture of any appreciation will take place at the

end of the term of the agreement, or sooner, if the following occurs: * * *

(h) *Suspension of Recapture Payment Obligation under a Shared Appreciation Agreement.*

(1) A borrower may request from a Farm Loan Program (FLP) servicing official, a suspension of the obligation to pay the recapture amount under a shared appreciation agreement, if:

(i) The shared appreciation agreement recapture payment is now due but there has been no agreement to pay the recapture payment;

(ii) The 10 year term of the agreement ends on or before December 31, 2000;

(iii) The secured real estate has not yet been conveyed so that the entire amount of the shared appreciation agreement recapture payment is due;

(iv) The borrower has complied with the other terms of the agreement;

(v) The borrower certifies in writing that the borrower is not able to pay the recapture amount;

(vi) The agreement or the obligations thereunder have not been accelerated and there are pending servicing rights under this subpart still available to the borrower; and

(vii) The Agency's mortgage which secures the agreement remains in effect for a period not less than the suspension period under this paragraph plus 3 additional years or the Agency determines that the mortgage can be extended for an additional 3 years beyond the suspension period.

(2) A request for suspension of the obligation to pay the recapture amount must be submitted in writing to the FLP servicing official after the borrower has received notification of the recapture amount due by the later of:

(i) 30 days after the borrower has received notification of the recapture amount due; or

(ii) May 24, 1999.

(3) The term of the suspension of the obligation to pay the recapture amount is 1 year.

(4) A suspension may be renewed by the Agency at the request of a borrower in writing not more than twice. Prior to renewal of a suspension, the Agency will determine, based on a Farm and Home Plan, the portion of the recapture amount the borrower is still unable to pay, or obtain credit to pay, from any other source (including nonprogram loans from the Agency, in accordance with this part), the suspension will be limited to such an amount. The Agency must also determine that the conditions prescribed in paragraphs (h)(1)(i) through (h)(1)(vi) are still met.

(5) The amount of the recapture payment suspended will accrue interest

at a rate equal to the applicable rate of interest of Federal borrowing, as determined by the Agency.

(6) Thirty days before the end of the suspension period, the FLP Servicing Official shall inform the borrower by letter of the suspended amount, including accrued interest that is owed and the date such payment is due.

(7) At the end of the suspension period, the borrower will be obligated to pay the amount suspended, plus any accrued interest and the borrower will be so notified.

(8) If the real estate that is the subject of the shared appreciation agreement during the suspension period is conveyed, the suspended amount, plus any accrued interest shall become immediately due and payable by the borrower in accordance with the procedures established under paragraph (c), except that an appraisal is not required on the real estate.

Signed in Washington, DC, on April 20, 1999.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 99-10258 Filed 4-21-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 98-052F]

RIN 0583-AC54

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees charged to meat and poultry establishments, plants, importers, and exporters for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. These fees are being increased in order to generate the additional revenue that FSIS is required to recover. Despite increased costs each year, these rates have not been adjusted since 1996.

FSIS is reducing the fee it charges for the Accredited Laboratory program. The Agency's analysis has identified decreased operational costs for this program. Accordingly, the Agency is reducing its fee.

DATES: Effective April 25, 1999.