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Notice and Comment

This rule is issued as a proposed rule. Upon completion of the public comment period and consideration of the comments received, FSA will issue a final rule addressing the comments, announcing the final determination, and making the provisions effective.

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which the rule applies are:

- 10.406—Farm Operating Loans.
- 10.407—Farm Ownership Loans.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), 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 was not performed.

Unfunded Mandates

This rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995 (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 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, administrative remedies must be exhausted.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA has completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. *See* the notice related to 7 CFR part 3015 subpart V published at 48 FR 29115 (June 24, 1983).

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 Agency's information collection requirements, currently approved under OMB control numbers 0560–0155, 0560–0157, and 0560–0167 are not affected by the proposed rule.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically. However, loan application forms are available electronically for downloading

through the USDA eForms Web site at <http://www.sc.egov.usda.gov>.

Background

Section 5319 of the 2002 Act provides another exception to the general rule prohibiting farm loans to borrowers who have received prior debt forgiveness. Under this provision, FSA farm loan borrowers who received debt forgiveness on not more than one occasion resulting directly and primarily from a major disaster or emergency designated by the President on or after April 4, 1996, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), may be eligible for direct or guaranteed farm operating loans to pay annual farm or ranch operating expenses. Note that while FSA makes emergency loans also when emergencies are designated by the USDA Secretary or FSA Administrator (physical loss loans only), only Presidentially-designated emergencies trigger this exception. In developing the proposed rule, FSA reasoned that if a borrower is operating in an area where a disaster or emergency is designated by the President, and the borrower is current on their FSA loan obligations prior to the designation, any subsequent debt forgiveness can be “directly and primarily” attributed to the major disaster or emergency. Therefore, the Agency is proposing that borrowers who are current on FSA loans at the onset of a Presidentially-declared disaster or emergency, but receive debt forgiveness on the loans within three years following the disaster, fall within the legislative exception and, therefore, would be eligible for OL loan assistance for paying annual farm operating expenses if all other loan requirements were met. The Agency specifically seeks comments on this issue.

Section 5001 of the 2002 Act revised an eligibility requirement for FSA's direct FO loan program. Applicants may now be eligible for this program if they participated in the business operations of a farm or ranch for at least three years, rather than having operated a farm or ranch for that length of time. FSA has in place a policy in its direct OL program defining farm participation with regard to acceptable farm experience and on-the-job training. Because this policy was already in effect, it was expanded to cover the new participation requirement for direct FO loans through administrative notice. The policy notice issued to field offices clarified the participation requirement by stating that applicants who: (1) Owned, managed, or operated a farm or ranch business for at least three years worth of complete production and