

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 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) 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 and 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.

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

Notice of this information collection package was published in a Proposed rule (67 FR 41869, June 20, 2002) under the provisions of 44 U.S.C. chapter 35. The information collections required for this regulation have been assigned OMB control number 0560-0164. The Information Collections associated with this rule have been approved by OMB until May 31, 2006.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:
10.404—Emergency Loans

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Discussion of the Final Rule

In response to the proposed rule published June 20, 2002 (67 FR 41869–41872), a total of nine comments were received from FSA employees, farm interest groups, and state government officials. Comments and suggestions focused primarily on the timeframes for DSA application submission and processing. However, most aspects of the proposed rule did receive comments with some commentors disagreeing with all changes. Instead they recommended changes that would expand the program into multiple set-asides on each loan without requiring a designated disaster. All comments were considered and will be addressed. Many of the comments have been adopted. The Agency's obligation to offer and consider eligibility for primary loan servicing, required by statute (section 331D of the Consolidated Farm and Rural Development Act (CONACT)) and 7 CFR part 1951, subpart S, as the applicable method for resolving delinquent account servicing is being considered in the final rule. The public comments are summarized as follows:

Timeframe for Complete DSA Application and Processing of DSA

Since DSA is not required by statute, the Agency must ensure that it does not hinder the statutory primary loan servicing requirements which are codified in 7 CFR part 1951, subpart S. To ensure the future viability of farming operations, save borrower equity and reduce Government losses, FSA proposed to amend the requirements for DSA to require that:

- (1) DSA applications must be made prior to the borrower becoming delinquent on the loans;
- (2) DSA will not be authorized if the borrower has already submitted an application for primary loan servicing; and
- (3) Only primary loan servicing will be considered when a borrower becomes 90 days past due.

All nine commentors indicated that the requirement for a DSA application to be complete prior to the borrower becoming past due allows inadequate time for disaster declarations and borrower consideration of servicing options. One commentor stated that a borrower's need for DSA could span two or more years and that primary loan servicing is cumbersome and time consuming. This respondent did not indicate what timeframe would be appropriate. The Agency notes however, that this amount of time would well

exceed all statutory timeframes for the servicing of delinquent loans. Two commentors indicated that the deadline to submit a DSA application should be extended until the borrower is 90 days past due. This suggestion was accepted and adopted in sections 1951.952 and 1951.954(a)(5) of the final rule.

All commentors also felt that some flexibility should be allowed for processing DSA applications after FSA provides delinquent borrowers with initial notification of primary loan servicing and during the processing of the Primary Loan Servicing (PLS) application. It was stated that this would allow the borrower to choose between servicing options and several comments were submitted on this section of the rule. One commentor objected to the affirmative statement made in the rule that the "DSA will not be used to circumvent the servicing available under subpart S of this part." Two comments also indicated that borrowers should have some type of "safety net" beyond a strict deadline, if FSA does not meet its time limit for processing a DSA application. One commentor believed that a 120 day time limit should be imposed with SED consideration required beyond that point. In evaluating all the above comments, it must also be considered that PLS is dictated by statute and FSA and the borrower must meet certain timeframes. However, after consideration of these comments, we believe that the extension of the DSA timeframes is warranted. Therefore, to address the PLS processing timeframes and DSA application deadline issues, the final rule provides that DSA consideration may continue until a complete PLS application must be submitted. This will require that DSA consideration and closing be completed prior to the borrower becoming 165 days past due. (FSA notifies a borrower 15 days after the borrower is 90 days past due of all PLS options, and the borrower then has 60 days to submit a complete PLS application. $15 + 90 + 60 = 165$). In sections 1951.954(a)(5) and 1951.954(a)(6) of 7 CFR, timeframes for both the borrower and the Agency have been lengthened accordingly beyond those proposed to ensure that adequate time exists for application submission, processing and completion.

Additional Security Requirements

Additional security requirements were proposed to ensure the availability of collateral throughout the term of the loan if the borrower is not current at the time of the DSA. This is consistent with the requirements of 7 CFR 1951.910(b) and, since payments can be set aside for