

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560-AG46

Revision of Interest Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to revise the regulations that govern how an FSA Farm Loan Programs (FLP) guaranteed loan borrower may obtain a subsidized interest rate on their guaranteed farm loan. This program is known as the Interest Assistance (IA) Program. Changes include deletion of annual review requirements, limitations on loan size and period of assistance, and streamlining of claim submission. The changes are intended to reduce paperwork burden on program participants and agency employees, make IA available to more farmers, reduce the costs of the program, and enhance the fiscal integrity of the program.

DATES: Comments on the proposed rule, the information collections in this rule, or alternatives to this proposal, must be received on or before August 22, 2005 to be assured of consideration. Comments received after this date will be considered to the extent practicable.

ADDRESSES: The Farm Service Agency invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to Tracy.Jones@wdc.usda.gov.
- Fax: Submit comments by facsimile transmission to (202) 690-1117.
- Mail: Send comments to Director, Loan Making Division, Farm Loan Programs, FSA, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250-0522.

Mail is subject to security screening which may delay its delivery.

- Hand Delivery or Courier: Deliver comments to 1280 Maryland Avenue, SW., Suite 240, Washington, DC 20024.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

All comments including the name, address, and email address provided for the commentor become a matter of public record. Comments received in connection with this rule will be available for public inspection 8:15 a.m.-4:45 p.m., Eastern Standard Time, except holidays, at 1280 Maryland Avenue, SW., Suite 240, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Tracy L. Jones, Senior Loan Officer, Farm Service Agency; telephone: (202) 720-3889; facsimile: (202) 720-6797; E-mail: Tracy.Jones@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD). All comments and supporting documents on this rule may be viewed by contacting the information contact. All comments received, including names and addresses, will become a matter of public record. Comments on the information collection requirements of this rule must be sent to the addresses listed in the Paperwork Reduction Act section of this rule.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

FSA certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, is not required to perform a Regulatory Flexibility Act, Public Law 96-534, as amended (5 U.S.C. 601). An insignificant number of guaranteed loan borrowers and no lenders are small entities. This rule does not impact the small entities to a greater extent than large entities.

Environmental Evaluation

The environmental impacts of this rule have been considered under 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 regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment. No environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. It will not affect IA agreements entered into prior to the effective date of the rule to the extent that it is inconsistent with the terms of the agreements. Existing agreements will be honored and continue to be reviewed and serviced in accordance with the regulations in effect when the IA agreement was executed. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before bringing any action for judicial review.

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 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) does not apply to this rule because it contains no Federal mandates, as defined in UMRA.

Paperwork Reduction Act

The amendments to 7 CFR part 762 proposed in this rule will revise the information collection requirements previously approved by OMB under 44 U.S.C. chapter 35. Comments regarding the following issues should be sent to

the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Tracy L. Jones, Senior Loan Officer, Farm Loan Programs Loan Making Division, Farm Service Agency, USDA 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250-0522: (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 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.

Title: 7 CFR 762—Guaranteed Farm Loans.

OMB control number: 0560-0155.

Expiration Date of Approval: August 31, 2007.

Type of Request: Revision to a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number 0560-0155 is needed to effectively administer the FSA guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating commercial lenders. The basic objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The reporting requirements imposed on the public by the regulations at 7 CFR part 762 are necessary to administer the guaranteed loan program in accordance with statutory requirements of the Consolidated Farm and Rural Development Act and are consistent with commonly performed lending practices. Collection of information after loans are made is necessary to protect the Government's financial interest. This proposed rule will reduce information requirements which are imposed on the public. Savings will be reflected in reduced loan origination and servicing requirements for loans with Interest Assistance. This reduction will occur as a result of the elimination

of the annual needs test, which requires lenders to submit annual cash flow and financial information to justify the need for continued assistance.

Estimate of Burden: Public reporting burden for the collection of information in this regulation is estimated to average 0.7535 hours per response.

Respondents: Commercial Banks, Farm Credit System, farmers and ranchers.

Estimated Number of Respondents: 5,500 lenders, 9,000 loan applicants.

Estimated Number of Responses per Respondent: 49.90 per lender, 2.14 per loan applicant.

Estimated Total Annual Burden on Respondents: 221,360 hours.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act, which requires Federal Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Most of the information collections required by this rule are fully implemented for the public to conduct business with FSA electronically. However, a few may be completed and saved on a computer, but must be printed, signed and submitted to FSA in paper form.

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.

Federal Assistance Programs

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 Proposed Rule

The FSA guaranteed loan program is designed to provide financing to creditworthy farmers who would be unable to obtain sufficient credit to fund their farming operations without the guarantee. Since the mid-1980's, the Agency has also provided pursuant to Section 351 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1999) an interest subsidy up to an annual interest rate reduction of 4

percent on certain eligible farmers' guaranteed farm loans. This interest subsidy, or interest assistance (IA), as it is now called, enables lenders to provide credit to operators of family farms who do not have the financial resources to meet the standard repayment terms. IA is subject to additional eligibility criteria beyond that required for the initial guarantee. This rule proposes to amend the regulatory requirements for the IA program.

The changes in this proposed rule will enable lenders to provide credit to more operators of family farms, who have complex farming problems or lack financial resources to meet standard repayment terms, as compared to other operators of similar type operations. IA is intended to assist farmers who have underdeveloped managerial ability, low production, an underdeveloped operation, or suffer the effects of a natural disaster or adverse economic conditions. The specific changes proposed are discussed as follows:

Loans Eligible for IA

Current regulations at:

- 7 CFR 762.150 allows IA to be provided to both new and existing borrowers under the guaranteed Operating (OL) and Farm Ownership (FO) loan programs;
- 7 CFR 762.143(b)(3)(iii) provides that IA will be considered in conjunction with a rescheduling action; and
- 7 CFR 762.149(g)(2) provides that IA will be considered when a borrower defaults on a loan prior to acceleration.

While authorized by regulation, Congress has not appropriated IA funds for guaranteed FO's and existing guaranteed OL's since the implementation of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*) that became effective beginning in fiscal year 1992. As a result, IA funding has only been available for new OL's or the continuation of IA during the authorized period on loans when IA was granted at the time of initial loan approval. Therefore, in an effort to align the regulations with current practices under appropriations law, the proposed rule will revise its regulations to limit IA to new guaranteed OL's only.

Debt to Asset Ratio

Existing regulation, 7 CFR 762.150, provides for IA based simply on cash flow. However, program reviews by the Agency have found that some borrowers who receive IA have a significant net worth, with adequate financial strength that would allow them to restructure their balance sheet to meet their credit

needs without receiving IA. This rule proposes that IA be limited to applicants who possess a debt to asset ratio in excess of 50 percent prior to the new loan. We propose to set this limit at 50 percent because one-third of the existing guaranteed portfolio has a debt to asset ratio of 50 percent or greater and approximately one-third of the guaranteed operating loans receive IA. Additionally, a 50 percent debt to asset ratio is the most common capital standard used by the Agency's preferred lenders.

Maximum Assistance Period

Existing regulations limit IA for each borrower to a maximum of 10 years from the date of the first IA agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, whichever is less. The proposed rule would limit each borrower to a total of 5 consecutive years of IA eligibility, regardless of the number of loans received. New agreements may not extend beyond 5 consecutive years from the date of the initial agreement signed by the loan applicant or the term of the loan, whichever is less. The term of subsequent agreements would be reduced by the period of time any existing or previous IA agreement has been in effect. The intent of the program is to provide temporary relief. By reducing the number of years an individual borrower may receive IA, the Agency would significantly reduce its cost per borrower. The Agency feels that a term of 5 years is adequate for a farm operation to achieve or return to a level of profitability that is sufficient to sustain the operation without an interest subsidy. Therefore, reducing the current maximum assistance period from 10 years to 5 years realigns the program to meet its original intent.

The Agency realizes that some existing borrowers need some time to prepare for the reduced period of eligibility. Therefore, we propose to provide for a transition rule which will give any borrower at least two more years of eligibility after publication of the final rule as long as the total period does not exceed ten years from the effective date of the original IA agreement.

Maximum Interest Assistance Payment

This rule proposes that the maximum amount of debt on which an applicant may receive IA be limited to \$400,000. This will effectively limit the amount of loan principal that may be subsidized, regardless of whether it is in one loan or multiple loans, to a maximum of \$400,000. Currently, the maximum

guaranteed loan that can be approved is \$782,000, and IA is available on that entire amount. In recent fiscal years, IA funds have been depleted early in the year, and the number of larger loans receiving the subsidy contributed to this rapid depletion. Since the IA program is the most expensive of the Agency's guaranteed farm loan programs, limits are proposed to control costs and target funds to a larger number of eligible borrowers. Also, by capping the amount of debt on which an applicant is eligible to receive IA, the subsidy would be targeted to borrowers with the most need, and appropriated subsidized loan funds will be available for more farmers and ranchers. Had this change been in effect in fiscal year 2002, only 8 percent of the borrowers who received IA would have been affected; however, they received over 23 percent of the IA obligated. With the other changes in this proposed rule, it is still expected that all available funds will be utilized; however, this change will allow these limited funds to help more farmers and ranchers.

Guarantee Fees

This rule proposes that loans with IA be charged a guarantee fee. The current regulation, 7 CFR 762.130(d), waives the fee for loans with IA; this rule proposes to delete that language. The Agency is concerned that not charging a fee on loans with IA creates an unanticipated incentive for lenders to request IA. Reinstating the guarantee fee is expected to reduce potential abuse, and result in requests being submitted mainly by those with a legitimate need for the subsidy. This would also reduce the cost of the IA program to the Agency. The Agency will continue to waive the guarantee fee under that regulation for those loans used mainly to refinance an Agency direct loan and loans to beginning farmers or ranchers involved in the direct beginning farmer down-payment program.

Reduced Application Requirements

The existing regulation, 7 CFR 762.150, requires lenders to submit a completed IA needs analysis in addition to those items required for a loan without IA. In addition, requests for IA on lines of credit or loans made for annual operating purposes must also be accompanied by a projected monthly cash flow budget. Further, requests for IA for loans with unequal payments require that the lender submit a debt repayment schedule which shows scheduled payments for the subject loan in each of the remaining years of the loan. We have determined that these additional documents are not necessary

to make the evaluation, and are a significant burden on program participants and need not be required. Therefore, the proposed rule will require all lenders to submit the appropriate items required for a loan application, plus an IA needs analysis. The proposed rule will not require the submission of a monthly cash flow budget or a debt repayment schedule.

Removal of Annual Review Requirements

This rule proposes to reduce the submission requirements for annual claims for IA payment. In order to receive an IA subsidy payment, and to continue the Agency's obligation to pay the subsidy in the following year, current regulations require lenders to submit a long list of items each year, including:

- Request for Interest Assistance Payment.
- Current balance sheet.
- Projected cash flow budget for the period being planned.
- Copy of the IA needs analysis portion of the application, which has been completed based on the planned period's cash flow budget.
- Detailed statement of activity, including all disbursements and payments applied to the loan.
- Detailed calculations of average daily principal balances for the claim period.
- Summary of the operation's financial performance in the previous year, including a detailed income and expense statement.
- Narrative description of the causes of any major differences between the previous year's projections and actual performance.

This list of requirements is excessively burdensome and has resulted in delays and confusion in the handling of subsidized loans. In addition, these requirements are the subject of the majority of complaints received from lenders, loan applicants, and FSA field staff about the program. Agency records indicate that 93 percent of the borrowers operating under an IA agreement receive the subsidy payment every year, regardless of the long list of qualifying requirements imposed on them every year. Clearly, the significant administrative burden imposed on the public and Agency to determine whether the borrower requires a subsidy payment each year is not cost effective. In addition, while all of the funding has been utilized nationally each year, this excessive burden creates an unbalanced program as it discourages many lenders from participating in the program at all. Twelve states have less than five IA

loans on their books. This indicates the program is basically unavailable to farmers that may need assistance in these areas.

In this rule it is proposed that IA will simply be authorized for 5 years for the borrower from the date of the first IA agreement. If the loan is for less than 5 years, however, IA will be approved for the term of the loan. The term of an IA agreement on subsequent loans will be limited to 5 years from the date of the first IA agreement. IA will be approved at the initial loan closing and will be renewed each year on a designated date, expected to generally be the payment due date or loan anniversary date. The lender only will be required to submit:

- An Agency IA payment form, and
- The average daily principal balance for the claim period, with supporting documentation.

This will greatly reduce the paperwork associated with IA loans. The amount of subsidy will change each year consistent with, and only to the extent that, the principal balance of the loan changes.

Fees Charged by Lenders for IA Claims Submission

Agency reviews of lenders indicate that some lenders charge fees to the borrower for the preparation of documentation and claims for payment of IA that are submitted to FSA. The range of fees charged by lenders varies substantially from modest document preparation fees to significant charges for loan analysis and preparation of cash flows, balance sheets, and needs tests. Since the analysis activities and requirements for cash flows, balance sheets, and recurring annual needs tests in connection with IA are being eliminated, fees for such activities involved with IA loans will no longer be appropriate. Further, in keeping with the intention of providing assistance to economically impacted borrowers and to ensure consistent treatment of all borrowers, the charging of fees for the annual submission of IA claims by lenders is prohibited under the proposed rule.

First and Final Claims

Existing regulations require final IA claims to be submitted concurrently with the submission of any estimated loss claims. The proposed rule will require, upon liquidation of a loan, that the lender complete the Request for Interest Assistance and submit it to the Agency concurrently with any estimated or final loss claims. IA will be calculated through the date that interest accrual ceases in the case of an estimated loss claim, or a final loss

claim when it is not preceded by an estimated loss claim.

IA claim periods for most installments are required to be exactly 12 months. This rule maintains current requirements providing that IA claims for final payments be calculated based on the average daily principal loan balance, prorated over the number of days the loan has actually been outstanding during the payment period. The period for all other claims must be for a period not exceeding 12 months.

Servicing

The new 7 CFR 762.150(d) clarifies procedures for when a loan subject to IA may be transferred, discontinuation of IA in the event of a loan writedown, and when interest on a loan covered by an IA Agreement is reduced by court order in a bankruptcy reorganization.

This rule proposes to consolidate the provisions governing the handling of loans with IA regarding transfers and assumptions, consolidations, and writedowns to one paragraph for clarification purposes.

The rescheduling and deferral provisions in the existing regulations also are proposed to be revised regarding the obligation of additional years of IA and increases in the restructured loan amount. The proposed rule will allow the rescheduling of loans subject to IA; however, the IA will not be extended beyond 5 years from the date of the first IA agreement, nor will the amount of principal subject to IA be increased above that approved on the existing agreement. Thus, the restructured loan amount, including any interest capitalized, may not exceed the original loan amount. Interest on the loan to be restructured that cannot be paid or capitalized under this amount will have to be dealt with in another manner. This change is in keeping with the Agency's objective for IA to be reasonably limited in duration and amount to place the borrower on sound enough financial footing to meet their obligations without the need for continued subsidy.

Miscellaneous Changes

Existing regulations contain outdated references to forms and internal administrative processes to be completed for IA loans. This rule proposes the use of FSA forms, and clarifies what process is necessary for the borrower to receive IA on multiple loans. Internal processes are removed, and the organizational structure of the section is revised for clarity and readability.

List of Subjects in 7 CFR Part 762

Agriculture, Banks, Banking, Credit, Loan programs.

For the reasons stated in the preamble, the Farm Service Agency proposes to amend Chapter VII, as set forth below:

PART 762—GUARANTEED FARM LOANS

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

§ 762.130 [Amended]

2. Amend § 762.130 by removing paragraph (d)(4)(iii)(A) and redesignating paragraphs (d)(4)(iii)(B) and (C) as (d)(4)(iii)(A) and (B).

3. Revise § 762.145(b)(2)(i) and the first sentence of (b)(8).

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(2) * * *

(i) A feasible plan as defined in § 762.102(b).

* * * * *

(8) Any holder agrees to any changes in the original loan terms. * * *

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4. Revise § 762.150 to read as follows:

§ 762.150 Interest Assistance program.

(a) *Requests for interest assistance.* In addition to the loan application items required by § 762.110, to apply for Interest Assistance the lender's cash flow budget for the guaranteed loan applicant must reflect the need for Interest Assistance and the ability to cash flow with the subsidy. Interest Assistance is available only on new guaranteed OL's.

(b) *Requirements.* (1) *Eligibility.* The lender must document that the following conditions have been met for the loan applicant to be eligible for Interest Assistance:

(i) A feasible plan cannot be achieved without Interest Assistance, but can be achieved with Interest Assistance.

(ii) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan following the anticipated changes, with or without Interest Assistance.

(iii) The typical cash flow budget must demonstrate that the borrower will have a feasible plan throughout the term of the loan.

(iv) The borrower, including members of an entity borrower, does not own any significant assets that do not contribute

directly to essential family living or farm operations. The lender must determine the market value of any such non-essential assets and prepare a cash flow budget and Interest Assistance calculations based on the assumption that these assets will be sold and the market value proceeds used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for Interest Assistance.

(v) *Debt to Asset Ratio.* A borrower may only receive Interest Assistance if their total debts (including personal debts) prior to the new loan exceed 50 percent of their total assets (including personal assets). An entity's debt to asset ratio will be based upon a financial statement that consolidates business and personal debts and assets of the entity and its members.

(2) *Maximum Assistance.* The maximum total guaranteed farm debt on which a borrower can receive Interest Assistance in any year of borrower eligibility is \$400,000, regardless of the number of guaranteed loans outstanding.

(3) *Maximum time for which Interest Assistance is available.* (i) *General rule.* A borrower may only receive Interest Assistance for one 5-year period. The term of any Interest Assistance agreement executed under this section shall not exceed 5 consecutive years from the date of the initial agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, whichever is less. This is a lifetime limit.

(ii) *Transition rule.* Notwithstanding the general 5-year limitation of paragraph (b)(3)(i) of this section, a new Interest Assistance agreement may be approved for eligible borrowers to provide interest assistance through (2 YEARS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**), provided the total period does not exceed 10 years from the effective date of the original Interest Assistance agreement.

(4) *Multiple loans.* Interest Assistance can be applied to each loan, only to one loan or any distribution the lender selects; however, Interest Assistance is only available on as many loans as necessary, up to a maximum of \$400,000 guaranteed OL debt, to achieve a feasible plan.

(5) *Terms.* The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for Interest Assistance. A loan must be scheduled over the maximum term typically used by lenders for similar type loans within the limits in § 762.124. An OL for the purpose of providing annual operating

and family living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and/or livestock products which will serve as security for the loan. OL for purposes other than annual operating and family living expenses (i.e. purchase of equipment or livestock, or refinancing existing debt) will be scheduled over 7 years from the effective date of the proposed Interest Assistance agreement, or the life of the security, whichever is less.

(6) *Rate of interest.* The lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average farm customer.

(7) *Agreement.* The lender and borrower must execute an Interest Assistance agreement as prescribed by the Agency.

(c) *Interest Assistance claims and payments.* To receive an Interest Assistance payment, the lender must prepare and submit a claim on the appropriate Agency form. The following conditions apply:

(1) *Rate.* Interest Assistance payments will be four (4) percent of the average daily principal loan balance prorated over the number of days the loan has been outstanding during the payment period. However, for loans with a note rate less than four (4) percent, Interest Assistance payments will be the weighted average interest rate multiplied by the average daily principal balance.

(2) *Date of claim.* The lender may select at the time of loan closing, the date that they wish to receive an Interest Assistance payment and that date will be included in the Interest Assistance agreement. The initial and final claims submitted under an agreement may be for a period less than 12 months. All other claims will be submitted for a 12 month period, unless there is a loan rescheduling or lender substitution during the 12 month period in accordance with this section.

(3) *Claims.* A claim should be filed within 60 days of its due date. Claims not filed within 1 year from the due date will not be paid, and the amount due the lender will be permanently forfeited.

(4) *Calculations.* All claims will be supported by detailed calculations of average daily principal balances during the claim period.

(5) *Prohibition of claim preparation fees.* Lenders may not charge or cause a borrower with an Interest Assistance agreement to be charged a fee for preparation and submission of the items required for an annual Interest Assistance claim.

(d) *Transfer, consolidation and writedown.* Loans covered by Interest Assistance agreements cannot be consolidated. Such loans can be transferred only when the transferee was liable for the debt on the effective date of the Interest Assistance agreement. Interest Assistance will be discontinued as of the date of any writedown on a loan covered by an Interest Assistance agreement.

(e) *Rescheduling and deferral.* When a borrower defaults on a loan with Interest Assistance, or the loan otherwise requires rescheduling or deferral, the Interest Assistance agreement will remain in effect for that loan at its existing terms. The lender may reschedule the loan in accordance with § 762.145, if the capitalized interest does not cause the principal amount of the loan to be above the principal amount on the original Interest Assistance agreement. A claim for Interest Assistance through the effective date of the rescheduling will be submitted by the lender to be processed at the time of the rescheduling action.

(f) *Bankruptcy.* In cases where the interest on a loan covered by an Interest Assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, Interest Assistance will be terminated effective on the date of the court order. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible to receive Interest Assistance.

(g) *Termination of Interest Assistance payments.* Interest Assistance payments will cease upon termination of the loan guarantee, upon reaching the expiration date contained in the agreement, or upon cancellation by the Agency under the terms of the Interest Assistance agreement. In addition, for loan guarantees sold into the secondary market, Agency purchase of the guaranteed portion of a loan will terminate the Interest Assistance.

(h) *Excessive Interest Assistance.* Upon written notice to the lender, borrower and any holder, the Agency may amend or cancel the Interest Assistance agreement and collect from the lender any amount of Interest Assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(i) *Substitution.* If there is a substitution of lender, the original lender will prepare and submit to the Agency a claim for its final Interest Assistance payment calculated through the effective date of the substitution. This final claim will be submitted for

processing at the time of the substitution.

(1) Interest Assistance will continue automatically with the new lender.

(2) The new lender must follow paragraph (c) of this section to receive their initial and subsequent IA payments.

Signed in Washington, DC, on June 16, 2005.

James R. Little,
Administrator.

[FR Doc. 05-12316 Filed 6-21-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV05-920-1 PR]

Kiwifruit Grown in California; Relaxation of Pack Requirements for Kiwifruit Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the pack requirements for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule would require that kiwifruit marked as size 39 or 42 not vary in diameter by more than $\frac{3}{8}$ inch, regardless of pack type. In addition, the three tables currently under the pack regulation would be consolidated into one. By allowing handlers to utilize a single table for kiwifruit size designations and size variation tolerances regardless of pack or container, this rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

DATES: Comments must be received by July 12, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail: moab.docketclerk@usda.gov, or Internet: <http://www.regulations.gov>. All comments should reference the docket

number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA

would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revisions to the pack requirements for California kiwifruit under the order. This rule would require that Size 39 and Size 42 fruit not vary in size by more than $\frac{3}{8}$ inch, regardless of pack type. The Committee unanimously recommended these changes at its March 2, 2005, meeting.

Currently, three tables are included under the pack regulation to designate sizes and list the size variances permitted for the different pack arrangements used in the industry. This rule would consolidate tables into one table that would list size designations with applicable size variation tolerances for kiwifruit regardless of the pack or container type. This rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

Section 920.52 of the order authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's regulations specifies pack requirements for fresh shipments of California kiwifruit. Pack requirements include the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container.

Section 920.302 of the order's regulations specifies grade, size, pack, and container regulations for the fresh shipment of California kiwifruit. This section contains three tables regarding pack. One table in § 920.302(a)(4)(iii) specifies size designations for kiwifruit packed in volume fill containers (such as bags or bulk containers). These size designations are based on the maximum number of pieces of fruit per 8-pound sample. Two tables in § 920.302 specify size variation tolerances. One table in § 920.302(a)(4)(ii)(B) is applicable to volume fill containers and lists size designations with the corresponding size variation tolerance listed by diameter. The other table in § 920.302(a)(4)(ii)(A) is applicable to kiwifruit packed in trays and lists the variation tolerance in diameter by count (number of pieces of kiwifruit packed in a tray).

Since 1989, there have been two different size variation tolerances for Size 39 and Size 42 kiwifruit, depending on style of pack. The