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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AH41

Guaranteed Loan Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: The Farm Service Agency (FSA) is amending the regulations for guaranteed loans to change the amount charged and collected in order for FSA to provide a guarantee. Except in certain limited cases, FSA currently charges a fee of 1 percent (1%) of the guaranteed amount on all guaranteed loans. The rule change is necessary for FSA to be able to offset the cost of the guaranteed loan program to maintain program funding to farmers and ranchers. Specifically, FSA is changing the current guaranteed loan fee from 1 percent to 1.5 percent.

DATES: *Effective Date:* October 1, 2011.

Comment Date: We will consider comments that we receive by November 21, 2011.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the volume, regulation identifier (RIN) date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Director, Loan Making Division, Farm Loan Programs, FSA, USDA, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522.
- *Hand Delivery or Courier: Deliver comments to:* USDA FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW., Washington, DC 20250.

Comments will be available for inspection online at *http://www.regulations.gov* and in the Office of the Director, Loan Making Division, FSA, at 1400 Independence Avenue, SW., Washington, DC, Monday through Friday between 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Tracy L. Jones, telephone: (202) 720–3889. Persons with disabilities or who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

FSA published a proposed rule on May 15, 2006, (71 FR 27978–27980) proposing to amend regulations governing fees on loans made in the Guaranteed Loan Program.

As specified in 7 CFR part 762, FSA provides guaranteed loans to eligible lenders (for example banks, Farm Credit System institutions, credit unions) with a guarantee of up to 95 percent of the loss of principal and interest on a loan in certain cases. Farmers and ranchers apply to an agricultural lender, who then applies for the guarantee. The FSA guarantee permits lenders to make agricultural credit available to farmers who do not meet the lender's normal underwriting standards.

FSA guaranteed loans may be made for farm ownership, conservation, and operating purposes. Guaranteed farm ownership loans (FO) generally may be made to purchase farmland, construct or repair buildings and other fixtures, develop farmland to promote soil and water conservation, or refinance debt. Guaranteed operating loans (OL) generally may be used to purchase livestock, farm equipment, pay for minor improvements to buildings, costs associated with land and water development, annual operating expenses, family living expenses, and to refinance debts under certain conditions. Guaranteed conservation loans (CL) may be made to implement conservation projects deemed necessary by a farmer's Natural Resources Conservation Service conservation plan. On May 13, 2011, a **Federal Register** notice (76 FR 27986) announced that FSA is no longer accepting direct or guaranteed loan applications for CL Program due to a lack of funding. A notice will be published in the **Federal Register** announcing the date FSA will resume accepting direct and guaranteed loan applications for the CL Program if funding becomes available.

The authority for FSA to set the amount of the fee is through several laws. The Consolidated Farm and Rural Development Act (CONTACT) section 307(b) (7 U.S.C. 1927) authorizes fees on farm ownership loans. As specified in the CONACT, the fees are to be set at an amount as ''the Secretary may require.'' For the OL and CL Program, Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701) authorizes fees be prescribed for services or things of value to individuals or businesses provided by the Government.

FSA currently charges a one-time guarantee fee of 1 percent (1.0%) on guaranteed loans at the time of loan origination as specified in 7 CFR 762.130. FSA does not charge continuation fees for annual renewal of lines of credit (LOC) type OLs, loan servicing, or restructuring actions.

In the proposed rule, FSA proposed increasing the existing one-time guarantee fee from 1 percent to 1.5 percent and adding a new annual continuation fee of 0.75 percent for advances on LOCs. This rule will change the regulation for the one-time guarantee fee from a fixed rate of 1 percent to a calculated rate that will initially be set at 1.5 percent on October 1, 2011. The fee schedule with this new rate will be available at *http://www.fsa.usda.gov/Internet/FSA_File/loanschartoct11.pdf* and at any FSA office and is subject to future necessary revisions.

The increase to 1.5 percent is required now because as proposed in the 2012 budget FSA will have less authority to fund guaranteed loans. Based on the proposed 2012 budget, the fee will need to be increased to 1.5 percent for FO, OL, and CL guarantees. FSA expects future budgets will result in occasional small increases in the future, but does not expect that routine annual increases would be required.

The assumptions used in the President's Fiscal Year (FY) 2012 Budget proposal included ''Upfront fees'' of 1.5 percent in calculating the subsidy costs for FO, OL, and CL guarantees. In addition, the 2012 budget

proposes a substantially lower budget authority for the Guaranteed Loan Program. Without the increase in the guarantee fee, there will be no budget authority to make any guaranteed FOs and very little budget authority to make guaranteed OLs.

The budget process for FSA loans is governed by the Federal Credit Reform Act (Credit Reform) of 1990. Credit Reform changed the way the costs of direct loans and loan guarantees are accounted for in the Federal Budget, placing the costs of credit programs on a budgetary basis equivalent to other Federal spending. These costs, referred to as subsidy costs, are developed based on criteria published in the Office of Management and Budget (OMB) Circular No. A–11, ''Preparation, Submission, and Execution of the Budget.'' Annual appropriations for the FSA Guaranteed Loan Program are based on these subsidy costs, not the actual principal of the loans guaranteed, and are recorded as budget authority.

In summary, the subsidy cost represents the cost to the Government for each dollar guaranteed and this is the amount of ''budget authority'' appropriated to the agency. For example, if the subsidy cost is $0.03 for each dollar guaranteed, the subsidy rate is 3 percent. The total principal amount that can be guaranteed by FSA in a fiscal year, referred to as ''program authority,'' is determined by dividing the budget authority by the subsidy rate (program authority = budget authority ÷ subsidy rate). FSA program authority is reduced if there is a decrease in budget authority, without a corresponding decrease in subsidy rate, or an increase in subsidy rate, without a corresponding increase in budget authority. Expenses such as employee salaries, office leases and supplies, and software development are excluded from the program's budget authority.

As discussed below in the discussion of comments, FSA reconsidered the proposed annual continuation fee of 0.75 percent for a LOC included in the proposed rule and is not implementing that proposed new continuation fee.

Discussion of Comments

FSA received 619 comments on the proposed rule from individuals, employees, and the District of Columbia.

The following provides a summary of the issues raised in the comments to the proposed rule and our responses, including changes we are making to the regulations in response to the comments.

An overwhelming majority of the comments received opposed the rule change. Although most comments were specific about either the proposed fee increase or the new annual fee, other comments responded to the proposed rule in general.

The majority of the comments opposed adding an annual 0.75 percent fee to LOCs as an excessive and cumbersome fee to collect on an annual basis. FSA has taken into consideration the requirements of the budget and the burden this administrative fee will have on LOCs, and is not adding the proposed 0.75 percent annual continuation fee. For guaranteed LOCs the guarantee fee would still be due in the first year, but farmers would have access to funding in future years without any additional fee cost. Because FSA will not change the regulation regarding the LOC annual fee, the detailed discussion of comments and responses below focuses on the comments that include the proposed increase in the existing guarantee fee.

Several commenters supported the rule change suggesting that a guarantee fee of 1.5 percent would be manageable for FO, OL, and LOC. Several commenters supported the change noting that the costs of the guaranteed program have increased since the inception of the current pricing schedule in the early 1980s, and did not dispute increasing the fee to 1.5 percent on both term loans and lines of credit. The supporters believe the fee increase will not materially affect the borrower's cashflow because the 0.5 percent increase will be amortized over the term of the operating and farm ownership loans. Supporters indicated it would be better to charge a one-time fee rather than the annual continuation fee, even if the one-time fee was higher than the 1.5 percent.

Below are summarized issues raised in the comments FSA received regarding the guarantee fees:

Comment: Fees associated with the guarantee program may add from $1 to $7,000 to the cost of originating a loan, and in many cases may be the difference between a positive and negative cashflow. Increasing existing fees for operating and ownership loans up to the proposed 1.5 percent level would hurt a large number of producers.

Response: The 0.5 percent increase will have a greater impact on borrowers of LOCs and term OLs. For LOCs, the fee change has the greatest effect because the entire fee is paid by the farmer during the initial year of the loan; however, no additional fees will be charged in subsequent years when loan funds are readvanced. For term OLs, the fee increase has a lesser effect than with LOCs on the repayment requirements because the maximum term for these loans is 7 years, which limits the period over which the fee can be amortized. The impact on farmers receiving FO loans should be less significant. These are long term loans and amortization of the fee should have a minimal effect on cashflow. Based on a maximum loan of $1,119,000, the increase in the fee would be an additional $5,036 ($1,119,000 × 90 percent typical guarantee × 0.5 percent increase in fee) that could be amortized over the life of the loan. In FY 2010 the average fee was $2,544. If the fee on those loans were 1.5 percent, the average fee would have been $3,816. If the difference between the two fees is amortized over 7 years, at an interest rate of 5 percent, it would be an additional $220 annually. However, beginning farmers and socially disadvantaged (those who have been historically underserved) farmers who participate in the Downpayment Loan Program, along with borrowers who participate in the FSA Interest Assistance Program or a State Beginning Farmer Program and those direct FSA borrowers who are refinancing their direct loans will continue to have the one-time guarantee fee waived as provided in 7 CFR 762.130(d)(4)(iii)(C). In FY 2010, 13 percent of all guaranteed loans approved were not charged a fee under this regulation.

Comment: The proposed changes are burdensome on rural America. It is doubtful that FSA would cashflow with an additional 0.5 percent increase in guarantee fees. Therefore, the fee should stay as it is. While it is understood that the cost of doing business is increasing for everyone (including the Federal Government), proposing to increase costs targeting this segment of our population is unwise and ill-advised.

Response: The increase in the guarantee fee is not tied to expenses such as employees' salaries, office leases and supplies, and software development. The increase in the fee is necessary to insure that the guaranteed program has the funding necessary to implement the program and provide guarantee services to approved farm lenders. It is not to mitigate the above mentioned administrative expenses. Over the years, the cost of implementing the Guaranteed Loan Program has stayed relatively constant, which is attributed to the successful performance of the guaranteed lenders.

Comment: Instead of the proposed fee changes, change the guarantee fee to a 2 percent to 2.5 percent fee upfront.

Response: Based on the anticipated FY 2012 budget, the fee increase of 0.5 percent is the most appropriate increase at this time. This allows for a balance

between increased cost to the borrower and funds available. As noted above, the fee schedule is available at *http://www.fsa.usda.gov/Internet/FSA_File/loanschartoct11.pdf* and at any FSA office and may change in the future as needed.

Comment: Apply the proposed change only to new guarantees, not existing ones.

Response: There will be no changes to the existing loan guarantees. The guarantee fee change will take effect on October 1, 2011. For loans obligated before October 1, 2011, the existing 1 percent fee will be charged. Loans obligated after October 1, 2011, will pay the new 1.5 percent fee.

Comment: The proposed fee increase will make it harder for farmers to stay profitable, or ultimately survive. Increasing the fee on guaranteed loans only enhances the probability of default as fees would rise in excess of 350 percent on top of fees that are not being paid by other farmers. As an example, a five-year, $100,000 guaranteed LOC would now cost the operator an additional $3,500 (an extra 0.50 percent in 1 year + 0.75 percent for the remaining four years).

Response: As discussed above, FSA is not implementing the proposed 0.75 percent fee on annual advances for line of credits as presented in the proposed rule. Therefore in the above example ($100,000 loan) the guarantee fee would increase only by $450 ($100,000 loan × 0.90 typical guarantee × 0.005 increase in fee).

Comment: Without the new fee increases, many farmers could survive. However, with the fee increases, it may be the end of the road for many of these producers as they also face weather disasters and higher fuel and fertilizer expenses. With the economic crisis that producers are suffering, the last thing that they need is another expense.

Response: FSA is committed to providing the resources necessary to meet the challenges of rising operating expenses. FSA is aware of the unforeseen weather factors and the current state of the economy. FSA offers relief through loan servicing options and disaster or emergency loan assistance in the event weather conditions or other unforeseen circumstances prevent the borrower from meeting their financial obligations. FSA is dedicated to providing guaranteed credit to as many farmers as possible.

Comment: With higher fees, many farmers are not likely to meet the required loan terms to even qualify for the guaranteed loans. This puts more pressure on the direct loan program funding, which has had budget cuts over the years.

Response: FSA is limited by budgetary constraints and the increase in the guarantee fee is necessary to continue the program. Based on the average fee charged on loans closed in FY 2010, the proposed increase in the fee would equate to an additional $1,272 or $220 annually for a 7 year loan at 5 percent interest. Some operators with minimal cash flow margins will be unable to obtain guaranteed credit and may have to rely on the FSA direct loan program.

Comment: The proposed fee increase is an added expense to farmers and producers that they in turn cannot pass on to someone else.

Response: The guarantee fee is charged to and collected from the lender; however, FSA does allow the fee to be passed on to the borrower and, in practice, the fee is almost always passed on to the borrower and amortized in the loan. While this does increase the borrower's loan payments, budgetary constraints will not allow FSA to guarantee loans without the fee increase. FSA is not implementing the annual continuation fee that had been previously proposed.

Comment: USDA and FSA are taking advantage of a group of producers that do not have other options available to them.

Response: Some operators with minimal cash flow margins will be unable to obtain guaranteed credit. These operators would have the option and opportunity to apply for an FSA direct loan. However, to be able to continue to provide guaranteed credit to those farmers who do qualify for a guaranteed loan, FSA must increase the guarantee fee.

Comment: The fees would directly impact the most vulnerable farmers, namely, those who cannot qualify for receiving commercial loans. These farmers would be the least able to pay the new and higher fees. The result would be that these less credit-worthy farmers would have a very difficult time graduating to commercial credit, assuming they would even be able to remain in business in the first place.

Response: The guarantee fee is waived for loans involving interest assistance, loans where a majority of the funds are used to refinance an Agency direct loan (graduation), loans to beginning or socially disadvantaged farmers involved in the direct Downpayment Loan Program, and loans made through a qualified State Beginning Farmer Program per 7 CFR 762.130(d)(4)(iii)(c).

Comment: It is not fair for FSA to increase guaranteed loan fees as it would negatively impact the borrower's farming operation. FSA can generate additional revenues through some other means than increasing the cost of credit for the family farmers. FSA should find alternative ways to cut costs such as a reduction in staff. By increasing fees, FSA will be losing what presence it has with agricultural lenders not to mention the agriculture borrower.

Response: FSA's source to fund guaranteed loans is the subsidy provided by the budget, which takes into account payments made by the government to the public and payments made to the government by the public. Any savings recognized because of cuts in other areas would not alleviate the anticipated budget constraints within the funding levels of the guaranteed loan program. A reduction in FSA administrative costs, such as salaries, has no impact on the budget authority for loan funds. FSA budget for administrative costs is separate from the budget for funding the guaranteed loan program.

Comment: Increasing loan fees on the FSA guaranteed loan program is inconsistent with the goals of the program, which is to help those farmers and ranchers who could qualify for commercial credit if they had some additional support.

Response: The goal of the guaranteed loan program is to help farmers. By increasing the guarantee fee by only 0.5 percent, FSA will maintain the level of funds available to those farmers who could not qualify for commercial credit without a guaranteed loan. FSA is committed to serving the agriculture credit needs of all eligible farmers and ranchers. The fees charged will be lower than other government loan guarantee programs.

Comment: If the program becomes fee based, FSA would have to increase fees each year in order to provide the same level of funding. Without annual appropriations to support the guaranteed loan program, future fees could range widely from year to year.

Response: Guarantee fees could vary year to year however historically the cost of the guaranteed program has not varied greatly from year to year. FSA anticipates the guarantee fee will vary, but we believe it will not vary widely from year to year.

Comment: FSA should not have the authority to change fees in the future without formal promulgation of a change to the *Code of Federal Regulations.*

Response: The proposed rule provided that the level of fees charged for a guaranteed loan may change in the future without promulgation of a rule to

amend the guaranteed loan regulations. To accurately predict future fee requirements would not be possible, and the change in the fees may be required quickly after the adoption of a budget; therefore, FSA will not publish the fee amount in the regulations and will not change the fee through rulemaking. The guarantee fee will be posted on the FSA Web site at *http://www.fsa.usda.gov/Internet/FSA_File/loanschartoct11.pdf* and available at any FSA office. The guarantee fee will be adjusted when needed based on the budget authority for the fiscal year.

Comment: The Farm Credit System is required by law to provide financial services to young, beginning, and small farmers. Through the use of FSA guarantees, the Farm Credit System is able to provide financing to farmers that might not otherwise be assisted. To the extent the fee increases lessen participation in the Guaranteed Loan Program; the mission of the Farm Credit System is inhibited.

Response: Both FSA and the Farm Credit System are mutually committed to providing agriculture credit to the nation's farmers and ranchers. FSA does not believe the mission of the Farm Credit System will be inhibited by the increase in the guarantee fee. FSA believes that by implementing only the guarantee fee increase, the impact on a few farmers will be minimal when compared to the alternative of a reduction in available funds for all eligible farmers.

Comment: The fees will be a disincentive to attracting new banks into the FSA Guaranteed Loan Program. A number of banks will likely stop using the program and FSA will probably not find support for this fee increase in the banking industry. Fewer farmers and lenders using the program could cause the demise of the program.

Response: FSA believes that only a small percentage of lenders and farmers will choose not to participate, and will not have a significant impact on the sustainability of the program. The Guaranteed Loan Program offers risk management portfolio exposure to lenders. Many lenders value this aspect of the program, and will continue to use our program. Budget constraints will not allow FSA to operate at its current level without the guarantee fee increase.

Comment: The Small Business Administration (SBA) programs have experienced fewer banks and fewer rural customers using the program since increasing their fee structure.

Response: SBA makes direct business loans and guarantees loans to small businesses, as well as loans to victims of natural disasters. SBA also works to get government procurement contracts for small businesses and assists business owners with management and technical assistance and business training. In addition to loans for small business owners, SBA is authorized to provide loans for agriculturally related industries. Many of the customers that work with SBA are different from those customers that work with FSA. Both agencies charge guaranteed loan fees for participation in their programs, which can be passed on to the borrower. However, the fees charged by SBA are much higher than those that would be charged by FSA based on this rule. In both cases, the fees can be financed into the loan and amortized over the life of the loan resulting in minimal costs per year.

Comment: Offer a discount for the Preferred Lender Program (PLP).

Response: PLP was developed to recognize experienced lenders, who have demonstrated expertise in, and understanding of, agricultural lending and the FSA Guaranteed Farm Loan Program. PLP is beneficial to both lenders and FSA. The streamlined loan making and servicing processes in 7 CFR part 762 allow lenders to reduce administrative costs and provide a quick turnaround time and a higher level of service to their customers. These incentives are sufficient. PLP lenders must pay the loan origination fee just like the Standard Eligible Lenders (SEL) and Certified Loan Program (CLP) lenders. We are not making any change in response to this suggestion.

Miscellaneous Conforming Changes

Since the publication of the proposed rule, there have been several Farm Loan Programs rule changes, and a few of those that implemented provisions of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, referred to as ''the 2008 Farm Bill'') require conforming changes in this rule.

The current regulation specifies several guaranteed loan transactions that are not charged the guarantee fee, one of these is loans to farmers involved in the Direct Downpayment Program (see 7 CFR 762.130(d)(4)(iii)(C)). At the time the exemption was established, the exemption was for loans to beginning farmers involved in the Direct Beginning Farmer Downpayment Program. On December 8, 2008, a final rule published in the **Federal Register** (73 FR 74343–74346) implemented provisions of the 2008 Farm Bill required for socially disadvantaged and beginning farmers. The changes to the regulations made by that final rule included expanding and renaming the Downpayment Program to include socially disadvantaged farmers. Therefore, we are making a conforming change by revising and expanding the exception in 7 CFR 762.130(d)(4)(iii)(C) to specify that the guarantee will not be charged for loans to beginning or socially disadvantaged farmers involved in the Direct Downpayment Program (or beginning farmers participating in a qualified State beginning farmer program as discussed below).

In addition, as specified in 7 U.S.C. 1929(i)(3), USDA may ''not charge any person (including a lender) any fee with respect to the provision of any guarantee'' under subsection (i) ''Coordination of Assistance for Qualified Beginning Farmers and Ranchers.'' Subsection (i) addresses requirements related to State beginning farmer programs. As defined in 7 U.S.C. 1929(i)(5), the term ''State beginning farmer program'' means:

> * * * any program that is—
>
> (A) carried out by, or under contract with, a State; and
>
> (B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.

Therefore, we are making a conforming change by revising and expanding the exception in 7 CFR 762.130(d)(4)(iii)(C) to specify that the guarantee will not be charged for loans to beginning farmers participating in a qualified State beginning farmer program.

On September 3, 2010, an interim rule was published in the **Federal Register** (75 FR 54005–54016) implementing the new CL Program, which was established by the 2008 Farm Bill. Therefore, we are making a conforming change by to specify that the guarantee fee also will be calculated for the CL Program guaranteed loans.

Effective Date

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. If the guarantee fee is not increased to 1.5 percent for FY 2012, then FSA will not be able to guarantee any new FOs and very few OLs. Therefore, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. FSA has decided it is appropriate to issue its final policy as an interim rule to give the public more opportunity to

comment on the increase to the one-time guarantee fee and to understand better the need to increase the fee. Publishing this rule as an interim rule allows FSA to increase the guarantee fee and therefore maintain the Guaranteed Loan Program, while allowing time for public comment.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this interim rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on substantial number of small entities for the reasons explained below. Therefore, FSA has not prepared a regulatory flexibility analysis.

All guarantee fees are charged to and collected from the lender by FSA. FSA allows the fee to be passed on to the applicant and, in practice, the expense is almost always passed on to the borrower or applicant. All FSA guaranteed loan borrowers and all farm entities affected by this rule are small businesses according to U.S. Small Business Administration small business size standards. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all sizes of entities. The costs of compliance with this rule are expected to be minimal. FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Evaluation

The environmental impacts of this rule have been considered in a manner consistent with provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The changes to the guaranteed loan program that are identified in this rule are administrative in nature. Therefore, FSA has determined that no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. 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.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies in accordance with 7 CFR part 11 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, the relationship between the Federal government and the States, or 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.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' This Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not have Tribal implications that preempt Tribal law. FSA will provide government-to-government consultation with Tribal governments to discuss this interim rule. The Tribal consultation will be available through a teleconference. Leadership from all Federally recognized Tribes that have lands within the affected counties will be invited to the consultation. FSA will respond in a timely and meaningful manner to all Tribal government requests for Tribal consultation about this rule and will provide additional avenues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives about ways to improve this rule in Indian country. When Tribal consultation is complete, FSA will analyze the feedback and incorporate any required changes through the final rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year 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 by Title II of UMRA for State, local, or tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

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

10.099—Conservation Loans,
10.406—Farm Operating Loans,
10.407—Farm Ownership Loans.

Paperwork Reduction Act of 1995

The amendments to 7 CFR part 762 in this interim rule require no new collection or changes to the current information collections approved by OMB under the control number 0560–0155.

E–Government Act Compliance

FSA is committed to complying with the E–Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 762

Agriculture, Credit, Loan programs—Agriculture.

For reasons discussed above, this rule amends 7 CFR part 762 as follows:

PART 762—GUARANTEED FARM LOANS

■ 1. Revise the authority citation for part 762 to read as follows:

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

■ 2. Amend § 762.130 by revising paragraphs (d)(4)(ii) and (d)(4)(iii)(C) to read as follows:

§ 762.130 Loan approval and issuing the guarantee.

* * * * *

(d) * * *

(4) * * *

(ii) The guarantee fee is established by the Agency at the time the guarantee is obligated. The current fee schedule is available at *http://www.fsa.usda.gov* and any FSA office. Guaranteed fees may be adjusted annually based on factors that affect program costs. The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds. The guarantee fee for the loan type will be calculated as follows:

(A) FO guarantee fee = Loan Amount × % guaranteed × (FO percentage established by FSA).

(B) OL guarantee fee = Loan Amount × % guaranteed × (OL percentage established by FSA).

(C) CL guarantee fee = Loan Amount × % guaranteed × (CL percentage established by FSA).

(iii) * * *

(C) Loans to beginning or socially disadvantaged farmers involved in the direct Downpayment Loan Program or beginning farmers participating in a qualified State Beginning Farmer Program.

* * * * *

Signed on September 12, 2011.

Bruce Nelson,

Administrator, Farm Service Agency.

[FR Doc. 2011–23724 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1163; Directorate Identifier 2009–NM–233–AD; Amendment 39–16795; AD 2011–18–13]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

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We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 25, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 25, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 2, 2010 (75 FR 75159), and proposed to supersede AD 2008–10–51, Amendment 39–15535 (73 FR 30752, May 29, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

To correct this unsafe condition, EASA [European Aviation Safety Agency] issued Emergency AD 2008–0087–E [dated May 8, 2008] to require detailed visual inspections (DVI) of both the left (LH) and right (RH) wing panel rear trailing edge around rib 3 and rib 5 and a subsequent Eddy Current inspection (NDI) [non-destructive inspection] of the same area to detect cracks, follow-up repair actions when cracks are found, and the reporting of all findings. The TC [type certificate] holder has now developed a modification, consisting of the cold expansion of the former lower wing panel CAMLOC holes together with the installation of new attachment material that will prevent the onset of cracks in the affected wing panel.

For the reasons described above, this [EASA] AD retains the inspection and repair requirements of AD 2008–0087–E, which is superseded, adds repetitive inspections and a requirement to modify both the LH and RH wing panel rear trailing edges from rib 3 to rib 9. Modification does not constitute terminating action for the new repetitive inspection requirements of this AD.

The new inspections are eddy current inspections. The modification includes cold expansion of the former lower wing panel CAMLOC holes and installation of new attachment material. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

MCAI Reference Updates

EASA issued AD 2009–0194R1 on March 10, 2011, which was corrected on March 22, 2011. References have been updated in Note 1 and paragraph (p) of this AD to include this revision.