

treatment in accordance with § 319.40-7(c) or with heat treatment with moisture reduction in accordance with § 319.40-7(d). However, as we mentioned above, these paragraphs no longer contain heat treatment schedules; all approved schedules now are listed only in the PPQ Treatment Manual. Accordingly, under this supplemental proposal, paragraph (o)(1)(i) would now require that wooden handicrafts be treated with heat treatment or heat treatment with moisture reduction as specified in the PPQ Treatment Manual, in accordance with 7 CFR part 305. If we finalize our April 2009 proposed rule and this supplemental proposal, we would add heat treatment that raises the center of Chinese wooden handicrafts to at least 60 °C and maintains the handicrafts at that center temperature for at least 60 minutes to the PPQ Treatment Manual as an approved treatment for these handicrafts, and modified paragraph (o)(1)(i) would require such a treatment.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This action supplements a proposed rule published in the **Federal Register** on April 9, 2009. We prepared an initial regulatory flexibility analysis for the proposed rule that considered the potential effects of the rule on small entities. The analysis identified individuals engaged in wood product manufacturing, importing of the regulated articles, or furniture and related products manufacturing as the entities most likely to be affected by the proposed rule.

The analysis took into consideration that the cost of treating Chinese handicrafts could be passed on to certain of these entities. However, it also noted that China already has in place the heat treatment facilities necessary to conduct treatment, and expected that, because of this, any increase in prices due to individual treatments would not be significant.

In assessing the possible cost of heat treatment, we determined that, because China already has heat treatment facilities at their disposal, a range of treatment schedules and durations would cost approximately the same amount per treatment, and would accordingly result in the same cost pass-through. The treatment schedule that we would authorize in this supplemental proposal—one that raises the center of Chinese wooden handicrafts to at least

60 °C and maintains the handicrafts at that center temperature for at least 60 minutes—falls within this range.

Therefore, we believe that the findings of the initial regulatory flexibility analysis prepared for the proposed rule are still accurate and appropriate.

That analysis was included in the proposed rule in its entirety, and is available on the Internet at the Regulations.gov Web site (see **ADDRESSES** at the beginning of this document for a link to Regulations.gov).

#### Paperwork Reduction Act

This action supplements a proposed rule published in the **Federal Register** on April 9, 2009, that would amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. That proposed rule would necessitate the use of certain information collection activities, including the completion of phytosanitary certificates and identification tags of packages of wooden handicrafts.

This supplemental proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ For the reasons set forth in the preamble, we propose to amend 7 CFR part 319 as set out in the proposed rule published on April 9, 2009 (74 FR 16146-16151, Docket No. APHIS-2007-0117), as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.40-5, paragraph (o)(1)(i) is revised to read as follows:

#### § 319.40-5 Importation and entry requirements for specified articles.

\* \* \* \* \*

(o) \* \* \*

(1) \* \* \*

(i) Wooden handicrafts must be treated with heat treatment or heat treatment with moisture reduction as specified in the PPQ Treatment Manual in accordance with part 305 of this chapter.

\* \* \* \* \*

Done in Washington, DC, this 17th day of September 2010.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2010-23817 Filed 9-22-10; 8:45 am]

**BILLING CODE 3410-34-S**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Parts 761, 763, and 764

RIN 0560-AI03

#### Farm Loan Programs Loan Making Activities

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Service Agency (FSA) is proposing to amend the Farm Loan Programs (FLP) loan making regulations to implement four provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The first proposed amendment renames, expands, and makes the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program permanent. The next two proposed amendments change the farm experience requirements in the regulations for direct Farm Operating Loans (OL) and direct Farm Ownership Loans (FO). The fourth proposed amendment makes some equine farmers and certain equine losses eligible for Emergency Loans (EM).

**DATES:** We will consider comments on the rule that we receive by November 22, 2010.

**ADDRESSES:** We invite you to submit written comments to this proposed rule and information collection. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may also send comments about the information collection to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. You may submit comments by any of the following methods:

- *E-mail:*  
[connie.holman@wdc.usda.gov](mailto:connie.holman@wdc.usda.gov).
- *Fax:* (202) 720-6797.
- *Mail:* Director, Loan Making Division (LMD), FSA, USDA, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250-0522.
- *Hand Delivery or Courier:* Deliver comments to FSA, LMD, 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.

Comments may be inspected in the Office of the Director, LMD, FSA, at 1280 Maryland Avenue, SW., Suite 240, Washington, DC between 8 a.m. and 4:30 p.m., except holidays.

**FOR FURTHER INFORMATION CONTACT:**

Connie Holman, Senior Loan Officer, LMD, FSA; telephone: (202) 690-0756; fax: (202) 720-6797; e-mail: [connie.holman@wdc.usda.gov](mailto:connie.holman@wdc.usda.gov). Persons with disabilities or 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).

**SUPPLEMENTARY INFORMATION:**

**Background**

This rule is proposing to implement four provisions of the 2008 Farm Bill (Pub. L. 110-246) concerning FSA's loan making activities.

**Land Contract Guarantee Program**

The Beginning Farmer and Rancher Land Contract Guarantee Pilot Program (pilot program) was originally authorized by section 5006 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) as an amendment to section 310F of the Consolidated Farm and Rural Development Act (7 U.S.C. 1936 (CONACT)). The pilot program was initially implemented in six States through a notice of funds availability (NOFA) published in the **Federal Register** on September 4, 2003 (68 FR 52557-52562) and further expanded to add three additional States through a notice published in the **Federal Register** on September 15, 2005 (70 FR 54520).

The pilot program called the Beginning Farm and Rancher Land Contract Guarantee Pilot Program was authorized in specified States for up to five guarantees of land contracts entered into by private sellers of farms to qualified beginning farmers each year from fiscal year 2003 through 2007. A land contract is a contract between a willing buyer and seller through which the buyer makes principal and interest payments to the seller over a specified time period while the seller retains title to the property until all payments are made. For the Land Contract Guarantee Program, land contract sales will be for land transfers of farmland. The pilot program provided the seller of the land a 10-year "prompt payment" guarantee of an amount not to exceed the total monetary amount of two amortized annual installments, plus the amount of

two years' property taxes and hazard insurance premiums.

The pilot program produced very limited activity with only 2 guarantees made.

Based on 2008 Farm Bill amendment (section 5005) to section 310F of the CONACT, FSA proposes expanding eligibility for land contract guarantees from the pilot program eligibility of only beginning farmers. In brief, a beginning farmer is someone who has not operated a farm for more than 10 years, does not own real farm property that aggregate acreage exceeds 30 percent of the median farm acreage of the farms in the county where the property is located and will substantially participate in the operation of the farm. Eligibility for the new Land Contract Guarantee Program also will include socially disadvantaged applicants who are members of a group whose members have been subject to racial, ethnic, or gender prejudice. (See definitions of beginning farmer and socially disadvantaged group in 7 CFR 761.2.) As in the pilot program and consistent with other FSA loan programs, eligibility will continue to be limited to family farms, which are farms in which the majority of the labor and management decisions are provided by the farm family and other regulatory criteria are met. (See FSA definitions for family farm, family member, and farm in 7 CFR 761.2.) FSA believes that the proposed Land Contract Guarantee Program will provide another alternative for intergenerational transitioning of farm real estate to help ensure the future viability of family farms for beginning farmers and socially disadvantaged farmers.

In this rule, FSA proposes regulations for the Land Contract Guarantee Program in 7 CFR part 763. As proposed, the new Land Contract Guarantee Program will be similar to the pilot program, with amendments needed to comply with section 310F of the CONACT. The program will become permanent in the final rule and expand nationwide. As required by the CONACT, FSA proposes expanding the guarantee available to give the seller the option of choosing either a:

(1) Prompt payment guarantee of three years' amortized annual installments plus the amount of three years' real estate taxes and hazard insurance premiums (instead of two under the pilot), or

(2) Standard 90 percent guarantee of outstanding principal on the land contract.

As proposed, the Land Contract Guarantee Program will be consistent with other FSA farm loan programs as

to general eligibility criteria and most servicing options.

As in the pilot program, the guarantee may only be used for financing the purchase of a farm on a new land contract basis. Existing contracts are not eligible for a guarantee since the purpose of the guarantee is to facilitate sales that would not occur without the guarantee.

Section 310F of the CONACT prohibits a loan guarantee "if the purchase price or the appraisal value of the farm or ranch that is the subject of the contract land sale is greater than \$500,000."

In addition, these guarantees, like other Farm Loan Programs guarantees, will not be used to establish or support a non-eligible enterprise. A non-eligible enterprise is defined in 7 CFR 761.2 as a business that produces exotic animals, birds and fish; produces non-farm animals ordinarily used for pets, companionship or pleasure; markets non-farm goods; or processes farm products when the majority of the commodities are not produced by the farming operation.

**Terms and Definitions**

Definitions used throughout FSA farm loan programs are in 7 CFR 761.2; the Land Contract Guarantee Program will also use those definitions. Section 310F of the CONACT uses the words "farmers" and "ranchers." For consistency with existing FLP regulations, for the Land Contract Guarantee Program the word "farm" will also include the word "ranch", and the use of the word "farmer" will also include "rancher."

The Agency proposes to add the definition of "land contract" to 7 CFR 761.2 as follows:

Land contract is an installment contract drawn between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

**Guarantee Plan Options**

As specified in section 310F of the CONACT, the prompt payment guarantee plan will cover three annual amortized installments, or an amount equal to three annual installments including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installment (rather than 2 years under the pilot). The standard guarantee plan is similar to FSA's regular guarantee program except that as specified in section 310F, it will cover an amount equal to 90 percent of the outstanding principal only and will not cover

interest. The seller selects which plan when applying for the Land Contract Guarantee Program.

When the Standard Guarantee Plan is requested, an appraisal will be completed as specified in 7 CFR 761.7. To allow flexibility, the appraisal may be completed prior to, or as a condition of approval. The appraisal will be obtained and paid for by FSA. The requirement for an appraisal is necessary to establish the Agency's initial commitment for the standard guarantee made under the Land Contract Guarantee Program. FSA will not guarantee a land contract under either the prompt payment guarantee plan or the standard guarantee if the sales price of the real estate exceeds the appraised value.

### Eligibility

The seller in the land contract receives benefits from the guarantee, therefore, FSA is proposing eligibility requirements for sellers. These requirements apply to private sellers, and to each entity member, in the case of an entity seller. The private seller and, if the seller is an entity, each member of the entity must:

- (1) Possess the legal capacity to enter into a legally binding agreement;
- (2) Not have provided false documents or statements during past or present dealings with FSA;
- (3) Not be ineligible due to disqualifications resulting from Federal Crop Insurance violation in accordance with 7 CFR part 718, and
- (4) Not be suspended or debarred under 7 CFR part 3017.

FSA does not intend to evaluate the financial strength of the seller. Contracts entered into by FSA with the seller as a result of an approved land contract guarantee will be written to sufficiently protect the Government's interest in case of financial failure of the seller. The buyer will be expected to conduct an adequate investigation of the seller to protect their own interests.

FSA proposes buyer eligibility requirements that will mirror the eligibility requirements established for the Guaranteed Farm Loan program involving conventional lenders and found in 7 CFR part 762. The buyer:

- (1) Must be the owner and operator of a family farm after the contract is completed. In the case of an entity buyer:
  - (i) Each entity member's ownership interest may not exceed the amount specified in the family farm definition in 7 CFR 761.2.
  - (ii) The entity members cannot themselves be entities.

(iii) The entity must be authorized to own and operate a farm in the State in which the farm is located.

(iv) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity must:

- (A) Operate the farm; and
- (B) Own the farm.

(v) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must:

- (A) Operate the farm; and
- (B) Own the farm, or the entity itself must own the farm.

(2) Must have participated in the business operations of a farm for at least 3 years out of the last 10 years prior to the date of the application;

(3) And all entity members, in the case of an entity, must not have received debt forgiveness on any direct or guaranteed FLP loan (that was not repaid) on more than three occasions on or prior to April 4, 1996, or on any occasion after April 4, 1996;

(4) And all entity members, in the case of an entity, must not be delinquent on Federal debt other than a debt under the Internal Revenue Code of 1986, when the guarantee is issued;

(5) And all entity members, in the case of an entity, must have no outstanding unpaid judgment awarded to the United States in any non-tax court;

(6) Must and in the case of an entity, the majority interest of the entity must, be held by members, who are a U.S. citizen, non-citizen national, or qualified alien;

(7) And all entity members, in the case of an entity, must possess the legal capacity to enter into a legally binding agreement;

(8) And all entity members, in the case of an entity, must not have provided false or misleading documents or statements during past or present dealings with FSA;

(9) And all entity members, in the case of an entity, must not be ineligible as a result of a conviction for certain activities relating to controlled substances;

(10) And all entity members, in the case of an entity, must have an acceptable credit history as required by section 310F;

(11) Must be unable to enter into the land contract unless the seller can obtain a FSA guarantee as required by section 310F;

(12) And all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation in accordance with 7 CFR part 718;

(13) And all entity members in the case of an entity, must not be suspended or debarred under 7 CFR part 3017.

In addition, buyer eligibility will be extended to include socially disadvantaged farmers (both beginning and non-beginning) as required by section 310F.

### Application Processing

FSA proposes application requirements for both the seller and the buyer. The seller will be required to provide the completed letter of interest along with the name, address, and telephone number of the chosen servicing or escrow agent.

FSA proposes the same procedure for the buyer to apply for the Land Contract Guarantee Program as is used under the direct loan program. Since the seller will not be governed by banking rules and eligibility requirements like approved lenders in FSA's regular guaranteed loan program, FSA will take a greater role in reviewing the buyer's financial capacity. Buyers must submit such information as:

(1) The completed FSA application form (same form as used in direct loan programs);

(2) If the applicant is an entity, other information such as a current personal financial statement from each member of the entity, a current financial statement for the entity itself, a copy of the entity's charter or any entity agreement, articles of incorporations and bylaws, certificate or evidence of current registration, and a resolution adopted by the Board of Directors authorizing specified officers of the entity to execute the desire land contract;

(3) Current financial information;

(4) A current farm operating plan;

(5) Brief description of the buyer proposed operation, farm training, and experience;

(6) Prior 3 years income tax and other financial records;

(7) Prior 3 years farm production records, if available;

(8) Verification of income and debts;

(9) Payment of credit report fee;

(10) Documentation of compliance with FSA environmental regulations contained in subpart G of 7 CFR part 1940;

(11) A copy of the proposed land contract; and

(12) Any other information FSA requires to process the application.

FSA proposes the same procedure for processing an incomplete application specified in 7 CFR 764.52 for direct loan processing. The section specifies that within 10 days after receipt of incomplete application will notify they

buyer of additional information needed to process the request and 20 days for the buyer to provide the needed information. If the information is not received within the initial 20 day timeframe, a subsequent letter will be sent and 10 additional days will be given to provide the missing information. The second letter will provide that if the information is not received within this 10 day timeframe, the incomplete application will be withdrawn without further notice. FSA proposes to adopt the same processing timeframes for a complete application specified in § 762.130 for standard eligible lenders in FSA's regular Guaranteed Farm Loans Program.

#### **Downpayment, Rates, and Terms**

As in the pilot program, FSA proposes that the buyer will be required to provide a minimum down payment of five percent of the purchase price of the farm. This is the minimum requirement of section 310F.

The interest rate charged by the seller to the buyer for the 10-year term of the contract cannot exceed FSA's direct FO loan rate in effect at the time the guarantee is issued plus three percentage points and the rate must remain fixed during the 10-year guarantee period. Section 310F requires a 10-year guarantee. FSA's direct loan interest rates may be obtained in any FSA office or by visiting the FSA Web site at: <http://www.fsa.usda.gov/daf/p.rates.htm>.

As in the pilot program, installments on land contracts must be amortized for a minimum of 20 years and must be equal installments. FSA proposes to prohibit balloon payments during the 10-year term of the guarantee. These provisions will permit more realistic cash flow projections, improve the buyer's chance of success, protect the Government's interest, and limit the amount of FSA's exposure due to the prompt payment guarantee plan.

#### **Fees**

FSA proposes that no guarantee fees be charged to obtain or execute the "Land Contract Agreement for Prompt Payment Guarantee" or the "Land Contract Agreement for Standard Guarantee." The seller and buyer will be responsible for payment of any expenses or local government fees necessary to process the land contract agreement or for the buyer to ensure that proper title is vested in the seller including, but not limited to, attorney fees, recording costs, and notary fees.

#### **Taxes and Insurance**

FSA proposes that maintenance of both annual property taxes and hazard insurance, if applicable, will be the responsibility of the seller. FSA believes that since maintenance of both of these items will be a stipulation for payment of the guarantee in the event of default, the ultimate responsibility should rest with the seller. Agreements regarding payment of taxes and insurance made between the buyer and seller should be part of the land contract. FSA will not be party to this agreement as the land contract is between the buyer and seller only.

The land contract must contain language to ensure that any insurance proceeds received for real estate losses will be used only to replace or repair the real estate improvements that were damaged, to make other essential real estate improvements that they mutually agree on, or to pay a prior lien, with an equal amount credited to the land contract. FSA need not be named on the insurance policy, but will reduce a loss claim if insurance funds are not used to replace improvements that were damaged or used to make other essential real estate improvements. The seller will maintain flood insurance, if available, if buildings are located in a special 100-year floodplain as defined by FEMA flood hazard area maps.

#### **Approval and Executing the Guarantee**

FSA proposes to follow the procedures consistent with the pilot program for approving and executing the guarantee. Once the guarantee is approved, all parties including the seller, buyer, escrow or servicing agent, and FSA's representative will execute either the "Land Contract Agreement for Prompt Payment Guarantee" or the "Land Contract Agreement for Standard Guarantee" depending on the guarantee plan chosen by the seller. These agreements describe the conditions of the guarantee and the process for payment of claims under the respective plan.

#### **Servicing Agents and Escrow Agents**

The Land Contract Guarantee Program requires the use of a third party agent to service the loan. The distinction of "escrow agent" versus "servicing agent" will be tied to the guarantee plan that the seller chooses and the duties that the agent performs.

The prompt payment guarantee plan, as proposed requires use of a third party escrow agent. FSA proposes that escrow agents must be bonded and may include title insurance companies, attorneys, financial institutions, or any fiscally

responsible institution as determined by FSA. If the terms of the land contract agreement allow, the escrow agent's fee may be taken from each payment and a pro-rata share remitted to the seller, but FSA will not dictate how to establish payment to the escrow agent. The escrow agent for the seller must provide evidence to FSA that property taxes are paid and insurance is kept current on the security property. Although not required by section 310F of the CONACT for a prompt payment guarantee, this requirement will protect FSA from losses from third party taxing authorities and losses due to failure of either the buyer or the seller to maintain adequate insurance coverage.

The standard guarantee plan, as proposed, requires use of a third party agent that FSA is proposing to call a "servicing agent" rather than an escrow agent. This "servicing agent" would perform all the duties that the escrow agent performs under the prompt payment guarantee plan, but would also perform additional duties than an escrow agent does not normally perform, but that a lender under FSA's traditional guarantee program would when servicing guaranteed loans. These additional duties include gathering financial information from the buyer, performing an annual analysis of the farming operation, doing an annual inspection of the farm, and preparing an annual inspection report. It is necessary to have a servicing agent perform these additional duties and provide the information to FSA because FSA has the potential for a much greater financial loss under the standard guarantee than under the prompt payment guarantee. If the terms of the land contract agreement allow, the servicing agent's fee may be taken from each payment submitted by the buyer, and a pro-rata share remitted to the seller; but FSA will not dictate how to establish payment to the servicing agent.

The proposed standard guarantee plan requires the servicing agent to handle transactions relating to the land contract between the buyer and seller, including receiving all contract installment payments and remitting them to the seller. The servicing agent must send the buyer a payment reminder letter 30 days prior to the due date of each annual installment. The servicing agent is also responsible for providing evidence to FSA that property taxes have been paid and hazard insurance is kept in effect when insurable structures are on the security property. In most, but not all cases, provisions for payment of taxes and hazard insurance premiums, if applicable, will be included in the land contract; however,

under the standard guarantee plan, the seller is responsible for paying property taxes. The servicing agent also must submit a status report to FSA and to the seller semi-annually as of September 30 and March 31 showing the outstanding principal and interest balance on the land contract agreement. This is the same report information that guaranteed lenders are required to submit semi-annually to FSA for the regular guaranteed program in 7 CFR 762.141. The report is used to keep FSA informed of its potential risk exposure and is required for FSA to complete its annual financial statement. The servicing agent also must perform an annual physical inspection of the collateral property and provide a written report to FSA. Annually, the servicing agent will also obtain from the buyer a current balance sheet, income statement, cash flow budget, along with any additional information needed, perform an analysis of the buyer's financial condition, and provide the information to FSA. The servicing agent also must perform any other duties that may be required by State law or agreed to by the seller and the buyer in the land contract.

The reason FSA is requiring more from the servicing agent for guarantees made under the standard guarantee plan is that FSA has greater potential financial risk exposure under this option than the prompt payment guarantee plan, where FSA's exposure for possible loss claim is limited to three annual installments plus three years' property taxes and hazard insurance premiums. Under the standard guarantee plan, FSA is liable for 90 percent of the entire principal amount of the land contract, and is not limited to just three installments as it is under the prompt payment plan.

FSA proposes that the servicing agent must be a bonded commercial lending institution or similar entity that is registered and authorized to provide escrow and collection services in the State in which the real estate is located.

#### **Land Contract Modification**

All modifications to the land contract will require FSA prior written approval except for a reduction in interest rate. Both the prompt payment guarantee plan and the standard guarantee plan allow the seller and buyer to lower the interest rate and the corresponding amortized payment schedule without FSA approval. FSA approval is not needed to lower the interest rate since that action is clearly in the best interest of both the buyer and FSA, and will not lead to an increased loss claim.

With FSA's prior written approval, the seller and the buyer may modify the land contract provided that a feasible plan can be reasonably projected throughout the remaining term of the guarantee and for the upcoming operating cycle. The seller and buyer may defer installments with prior approval from FSA.

A partial release is a release of a portion of the real estate included in the land contract. Any partial release requires prior approval by FSA, the buyer, and the seller in writing. All proceeds from a partial release sale must be applied to a prior lien owed by the seller, if one exists. In addition, an amount equal to the value of the parcel being released must be credited to the principal balance of the land contract. This is necessary because otherwise the security for the land contract would be reduced without a corresponding reduction in the debt owed by the buyer if the seller in the land contract transaction sells part of the real estate security without crediting the amount of the released property to the land contract balance.

All leasing or subleasing requests must be submitted to FSA for approval, and will only be approved if such action is determined not to be detrimental to FSA under the guarantee. Income received by the seller from royalties from mineral extraction must be applied to the principal balance of the land contract being guaranteed by FSA. If the landowner receives royalties from mineral extraction from the collateral property without crediting the amount to the land contract balance, the security for the land contract would be reduced without a corresponding reduction in debt owed by the buyer.

The seller cannot assign interest in the FSA guarantee to another party without FSA's written consent. The buyer can only transfer obligation in the land contract and the guarantee to an eligible applicant under the land contract program. The eligible applicant first must be approved by FSA and the seller in the land contract. If an eligible applicant cannot be found, the FLP Deputy Administrator may make an exception to this requirement.

If a land contract is modified, the seller must provide FSA and the escrow or servicing agent with a copy of the modified contract. Modifications other than those listed above must be approved by the FLP Deputy Administrator and will be approved only if such action is determined not to be detrimental to FSA under the guarantee.

#### **Delinquent Account Servicing**

If the buyer fails to make a payment under either the Land Contract Agreement for Prompt Payment Guarantee or Land Contract Agreement for Standard Guarantee, the escrow or servicing agent will send the first delinquent notice to the buyer within 30 days of the missed payment due date with a copy to FSA and the seller.

Under the prompt payment guarantee plan, if the buyer does not resolve the default within 30 days of the written demand, the escrow agent must make demand on FSA to pay the defaulted amount plus property taxes and insurance premiums, if applicable. This demand on FSA must be made within 90 days from the missed payment due date.

Under the standard guarantee plan, if a missed payment is not resolved within 60 days from the date of the demand letter, the seller has two options for determining the amount of the loss when a buyer defaults. The seller may either liquidate the real estate or have FSA establish the amount of loss by an appraisal.

If the seller chooses the liquidation option, the servicing agent must liquidate the real estate. The servicing agent will be required to submit a liquidation plan to FSA for approval, just as lenders do for the regular FSA guarantee program as specified in 7 CFR 762.149. This is necessary to assure FSA that the servicing agent is using a liquidation method that is likely to result in the greatest return on the sale of the property. The servicing agent will be required to have the liquidation completed within 12 months of the initial default unless prevented from doing so by bankruptcy action, redemption rights, or other legal action. FSA believes that under normal circumstances, this is an adequate amount of time to prepare a plan of liquidation, secure FSA approval of the plan, and complete liquidation. It will also prevent the possible deterioration of security property and keep loss claims to a minimum. A credit of an amount equal to the sales price received in a liquidation of the security property, with no deduction for expenses must be applied to the principal balance of the land contract. This differs from the regular guarantee loan program because in the guarantee loan program a loan is guaranteed, and the guarantee could include principal and interest, along with selling expenses and other charges to the account. In the Land Contract Guarantee program, FSA is guaranteeing only the principal amount of a land contract. To allow a deduction for

expenses would in effect be guaranteeing those expenses whereas this program only guarantees the principal amount of the land contract according to section 310F of the CONACT. The servicing agent must submit the loss claim to FSA along with a complete ledger of all transactions from the date the guarantee began.

FSA may require, but will pay for, an appraisal prior to approval of the liquidation plan. The amount of a loss claim is determined by the sale price, so before a loss claim is paid, FSA must be satisfied that the servicing agent received a realistic price for the security property. If the seller reacquires the property through liquidation, the loss claim amount will be based on the appraisal method, and the seller will give FSA a lien on the property for that amount. The reason for this is the original seller in the land contract agreement will be retaining the property, and will be required to sign a Shared Appreciation Agreement so that if the seller sells the property within 5 years for more than the amount FSA loss payment was based on, FSA will be able to enforce a future recovery. This is consistent with other FSA programs where a claim is paid on property the owner is retaining. It would not be a good use of taxpayer money to pay the seller for his loss, then have him turn around in a short time and sell at a profit, in effect collecting when he did not actually suffer a loss, and in effect double dipping.

If the seller chooses to have the amount of the loss established by an appraisal rather than liquidation of real estate, the servicing agent must inform FSA that the seller has chosen this method. FSA will obtain an appraisal and the loss will be based on the difference between that appraised value at the time the loss is calculated and the unpaid principal balance of the land contract at that time. For the resulting appraisal amount, the seller will only be allowed to appeal whether the appraisal is Uniform Standards of Professional Appraisal Practice (USPAP) compliant, as proposed in § 763.19.

In exchange for payment of the loss claim when the appraisal method is used, the seller must give a lien to FSA on the security property in the amount of the loss claim. If the property is sold within 5 years for more than the appraised value at the time of the loss claim, the seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount to be repaid (recapture), the market value of the property may be reduced by the value of certain capital improvements made by the seller to the

property in the time period from the payment of the loss claim to final disposition. This 5 year recapture period is consistent with FSA's direct loan program and with FSA's other guaranteed loan programs.

The original buyer in the land contract also has a responsibility to repay the loss claim, and is required to begin repaying the loss payment within a short time after it is paid. If the buyer has already paid back part of the loss claim to FSA and the seller sells the real estate for more than the appraised value when the claim was originally paid, the seller will only be required to repay the remaining unpaid balance. If the former buyer has paid back the entire claim, the seller will not be required to pay back any of the claim. If the seller in the original land contract does not sell the property within 5 years from the date of the loss claim, the lien will be released and the seller will have no further obligation to FSA.

Without a lien on the property, there is no realistic method of enforcing repayment from a sale of the property. This also prevents the seller from collecting on a loss and turning around in a short time period and selling the property for an amount higher than the appraised value, essentially obtaining a loss payment from the government when no loss really occurred. These provisions are consistent with other FSA loan programs.

#### **Federal Debt and FSA Recovery of Loss Claim Payments**

Any amount paid by FSA as a result of an approved loss claim is immediately due and payable by the buyer after FSA notifies the buyer that a loss claim has been paid to the seller. If the debt is not restructured into a repayment plan or the obligation otherwise cured, FSA may use all remedies available, including offset as authorized by the Debt Collection Improvement Act of 1996, to collect the debt. The amount paid on behalf of the buyer, and not yet repaid to FSA, will bear interest from the date of the FSA advance at the FLP non-program credit sales real property loan rate (available in local FSA offices) in effect at the time the first loss claim is paid.

The debt may be scheduled for repayment consistent with the buyer's repayment ability not to exceed 7 years from the date of the first FSA payment of a claim. Before a repayment plan can be approved, the buyer must provide FSA with the best lien obtainable on all of the buyer's assets. This includes ownership interest in the real estate under contract for guarantees using the prompt payment guarantee plan, if State

law permits. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by the individual members of the entity, including their interest in the guaranteed land contract.

Defaulted buyers with an FSA-approved repayment plan will supply FSA with a current balance sheet, income statement, cash flow budget, complete copy of Federal income tax returns, and any additional information needed to analyze the buyer's financial condition annually. If the buyer fails to perform as required on an FSA-approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed as specified in 7 CFR 766.351(c).

#### **Negligence and Negligent Servicing**

FSA may deny a loss claim in whole or in part due to seller negligence and negligent servicing that contributed to the loss claim. This also could include the escrow or servicing agent failing to seek payment of a missed installment from the buyer within the prescribed timeframes or otherwise failing to enforce the terms of the land contract; losing the collateral to a third party (for example, taxing authority, prior lienholder, etc.); not performing the duties and responsibilities required of the escrow or servicing agent; seller's failing to disclose environmental issues; or any other action in violation of the land contract or guarantee agreement not resulting in terminating of the guarantee.

#### **Termination of Guarantee**

The land contract guarantee and FSA's obligations under the agreement will terminate under the following scenarios:

- (1) At the end of the 10 year term of the guarantee, without notice;
- (2) When the land contract agreement is paid in full;
- (3) When there is a payment of a loss claim required by the standard guarantee plan;
- (4) If FSA pays 3 amortized annual installments or an amount equal to 3 annual installments (including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installments). An FSA-approved repayment plan will not constitute payment in full until such time as the entire amount due for the FSA-approved repayment plan is paid in full;
- (5) When the seller terminates the land contract for reasons other than monetary default;

(6) When there is a sale of the property without the guarantee being properly assigned; or

(7) If for any reason the land contract becomes null and void.

#### **Eligibility Change for Direct Farm Ownership and Operating Loans**

Currently, for all direct loan programs, if an applicant is relying on past farm experience to demonstrate sufficient managerial ability, the experience must have been within the last 5 years. Sections 5001 and 5101 of the 2008 Farm Bill amended sections 302 and 311 of the CONACT, respectively, to revise this eligibility requirement for FSA's direct farm ownership loan (FO) program and direct farm operating loan (OL) program to require training or farm experience, that the Secretary determines is sufficient "taking into consideration all farming experience of the applicant without regard to any lapse between farming experiences." As a result, FSA proposes to amend the experience requirements in 7 CFR 764.101 to consider all prior farming. FSA proposes to require this broadened farm experience requirement to be supplemented by on-the-job training or education that occurred within the last 5 years prior to the date of the application if all prior farming occurred more than 5 years prior to application.

FSA proposes to add the training or education requirement because the current technological innovations, market volatility, financial environment challenging today's farmers, and recent knowledge of industry practices will better equip applicants with the tools necessary to ensure the greatest chance for success in the present agriculture business climate. While farm experience is one avenue for gaining this knowledge, recent on-the-job training and education can be an equally sufficient substitute for acquiring the knowledge and skills necessary to successfully operate a farm or ranch. These changes to FO and OL regulations will allow applicants previously ineligible due to their lack of recent farm experiences an opportunity to receive assistance. FSA believes that with its history of providing supervised credit, these applicants can be provided an adequate opportunity to thrive in today's agribusiness industry.

#### **Emergency Loans**

FSA provides emergency loans to help producers recover from production and physical losses due to drought, flooding, other natural disasters, and certain quarantines. FSA proposes a number of changes in 7 CFR part 764,

subpart H, "Emergency Loan Program," to carry out section 5201 of the 2008 Farm Bill that amends section 321 of the CONACT to expand EM eligibility to equine farmers. In addition, FSA proposes to amend 7 CFR 764.102 to add an exception to the limitation prohibiting the use of loan funds to support non-eligible enterprises as defined in § 761.2 that includes a business that produces nonfarm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure. These proposed changes will make certain equine losses eligible under the EM Program. FSA proposes to expand EM eligibility criteria by amending 7 CFR 764.352 to extend eligibility to equine farmers whose primary enterprise is to breed, raise, and sell horses. For farmers whose primary enterprise is to breed, raise and sell horses, losses will be treated the same as losses for other types of livestock operations with a minor difference intended to accommodate the unique nature of the equine industry. FSA is proposing this change to both broaden the potential eligibility pool of farmers for EM and to adequately define qualifying equine losses. FSA proposes this definition because Conference Report (No. 110-627) language on the section clearly indicates Congress' intent to exempt losses associated with horses used for racing, showing, recreation, or pleasure and associated losses of income from eligibility under the EM Program. These losses will not be eligible and will specifically be prohibited in 7 CFR 764.353.

Since the equine industry is widely diverse and unlike many other livestock operations, FSA proposes to amend 7 CFR 764.355 to add guidelines regarding security requirements for loans to equine farmers. FSA believes these additional guidelines will allow flexibility in securing equine loss loans in States where the conventional Uniform Commercial Code (UCC) laws do not adequately address the perfection of liens on horses. In some States, to properly perfect liens on horses, the lender must obtain and hold the horse's breed registration papers, Jockey Club papers, or other papers that evidence ownership. In many instances, this procedure would impede the applicant from carrying out their normal course of business. Therefore, FSA proposes alternate security provisions in a specific order of preference. The security alternatives are similar to those developed for FSA's previous Horse Breeder Loan Program and were sufficient in providing adequate security for loans made under that program.

These alternative security provisions allow equine farmers the ability to carry out the normal course of business by allowing them to pledge other resources to fulfill the loan's security requirements. The security alternatives, in preference order are: Real estate, chattels and crops (other than horses), and other assets owned by the applicant.

FSA proposes additional specific guidance on appraisal and valuation requirements in 7 CFR 764.356 for equine loans that follow the guidelines established in FSA's previous Horse Breeder Loan Program. State laws may dictate rules for establishing the value of horses and the methods used to adequately perfect liens for equine loans. In some cases, it may be necessary for States to issue State specific guidelines in consultation with their local Office of General Counsel to give additional guidance in determining equine losses and specific security procedures.

#### **Executive Order 12866**

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866 and, therefore, OMB reviewed this proposed rule. A cost benefit assessment of this rule is summarized below and is available from the contact listed above.

#### **Summary of Economic Impacts**

The Cost Benefit Analysis covers three provisions required by the 2008 Farm Bill: Implementation of the Beginning Farmer or Rancher and Socially Disadvantaged Farmer or Rancher Contract Land Sales Program, which expands and makes permanent a pilot program, expansion of emergency loan program eligibility to include equine farmers, and revision of farm loan eligibility criteria regarding farming and ranching experience. These provisions are authorized by Sections 5001, 5005, 5101, and 5201 of the 2008 Farm Bill.

The program changes proposed in this rule are expected to have relatively minor impacts on FSA lending programs, as they affect only a small share of total lending authority. Likewise, impacts on budget authority and workload are expected to be small.

Implementation of the land contract guarantee program on a national basis is expected to enable 140 beginning and socially-disadvantaged farmers to purchase land each year, resulting in additional loan obligations of up to \$25 million annually. The USDA 2008 Agricultural Resource Management Study indicated that about one-fourth of all farmland buyers had at least one

beginning farmer present on the farm. While FSA's overall share of debt is around 7 percent for direct and guaranteed combined, its share for targeted groups tends to be larger. As a result, it is assumed that 10 percent of those eligible would actually apply and receive a guarantee, which results in FSA issuance of about 140 land contract guarantees annually once the program is fully implemented. While 140 land contracts per year, nationwide, may seem low, it is consistent with the experience of the pilot program.

The most notable impact is likely to be associated with the increased flexibility in evaluating farm experience, which will initially increase the number of farmers eligible for beginning-farmer loans. But, anticipated impacts from changing eligibility are expected to be naturally short-lived because changing the criteria for measuring farm experience is expected to enable 673 farmers to borrow in 2010 and 2011 rather than in 2012—in other words, since it moves up the year in which farmers will be eligible, the impacts will be most noticeable in 2010 and 2011. This change is expected to initially increase total obligations by \$47 million in fiscal year 2011, which is a minor share of total lending.

Expansion of the EM eligibility to include equine producers is expected to increase loan obligations by just more than \$2 million annually and involve an estimated 112 farmers nationwide.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601), FSA certifies that there would not be a significant economic impact on a substantial number of small entities. All FSA direct loan borrowers and all farm entities affected by this rule are small businesses according to the North American Industry Classification System and the U. S. Small Business Administration. 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 entities. As discussed in the CBA summary, the expected impacts are to enable a relatively small number of farmers to buy farms through guaranteed land contracts, enable beginning farmers to qualify sooner for FSA loans, and to allow equine farmers to be eligible for EM.

#### Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the 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 799 and 7 CFR part 1940, subpart G). FSA concluded that this rule will not have a significant impact on the quality of the human environment either individually or cumulatively, provided no shifts in land use are proposed and should be considered categorically excluded (7 CFR 1940.310). Therefore, FSA need not prepare an environmental assessment or environmental impact statement on this rule.

#### Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

#### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. As proposed, this rule preempts State and local laws and regulations that are in conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### Executive Order 13132

The policies in this rule would 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 would this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

USDA will undertake, within 6 months after this rule becomes effective, a series of regulation Tribal consultation sessions to gain input by Tribal officials concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any become necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and

Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

#### Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) for State, local, or tribal governments, or 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 in the Catalog of Federal Domestic Assistance to which this proposed rule would apply are:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA is requesting comments from all interested individuals and organizations on Land Contract Guarantee Program information collection activities and the change in information collection activities related to the regulatory changes in this proposed rule. In the Land Contract Guarantee Program, FSA is providing certain financial guarantees to eligible sellers in land transfers of farmland through a land contract sale to beginning farmers and socially disadvantaged farmers. The new information collection requests for Farm Loan Programs, General Program Administration; Direct Loan Making; and regular Direct Loan Servicing all result from expanding eligibility for EM to cover equine losses; and when approved will be incorporated into the existing approved ICRs (of the same titles) that will be up for a renewal this year. There are no changes to the approved burden related to the regulatory change in the required amount of farm experience.

*Title:* Land Contract Guarantee Program.

*OMB Control Number:* 0560–New.

*Type of Request:* New Collection.

*Abstract:* This information collection is required to support the regulations proposed in 7 CFR part 763, “Land Contract Guarantee Program,” which establishes the requirements for FSA’s

new Land Contract Guarantee Program. Information collections established in the regulations are necessary for the Agency to evaluate the buyer and seller's request for guarantee and determine if eligibility and security requirements can be met. It also establishes the requirements related to routine servicing actions necessary to monitor guarantee progress, and special servicing of land contract guarantee agreements related to buyers, sellers, and servicing and escrow agents for payment of loss claims and subsequent collection attempts.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 50 minutes per response.

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

*Estimated Number of Respondents:* 275.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Number of Responses:* 275.

*Estimated Total Annual Burden on Respondents:* 230 hours.

*Title:* Farm Loan Programs, General Program Administration.

*OMB Control Number:* 0560–New.

*Type of Request:* New Collection.

*Abstract:* This information collection is required to support the proposed regulatory changes that include equine losses as eligible for EM. Some of the same information collection activities will be used that are currently approved for 7 CFR part 761, "Farm Loan Programs, General Program Administration," which establishes requirements within FSA's Farm Loan Programs that are applicable to both making and servicing of all Farm Loan Programs loans including Emergency Loans. Information collections established by the regulation are necessary to ensure that program applicants and participants meet statutory eligibility requirements, loan funds are used for authorized purposes and the Government's interest in security is adequately protected. Specific information collection requirements include financial information in the form of a balance sheet and cash flow projection used in loan making and servicing decisions; information needed to establish joint bank accounts in which either loan funds, proceeds derived from the sale of loan security, or insurance proceeds may be deposited; collateral pledges from financial institutions when the balance of a supervised bank account will exceed \$100,000; and documentation that construction plans

and specifications comply with State and local building standards.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 54 minutes per response.

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

*Estimated Number of Respondents:* 388.

*Estimated Number of Responses per Respondent:* 1.1.

*Estimated Total Number of Responses:* 426.8.

*Estimated Total Annual Burden on Respondents:* 384 hours.

Once this information collection is approved, FSA will incorporate these collections into existing collections package 0560–0238.

*Title:* Direct Loan Making.

*OMB Control Number:* 0560–New.

*Type of Request:* New Collection.

*Abstract:* This information collection is required to support the proposed regulatory changes that include equine losses as eligible for EM in 7 CFR part 764, Direct Loan Making, which establishes the requirements for most of FSA's direct loan programs including the Emergency loan program. Information collections established in the regulation are necessary for the FSA to evaluate the loan applicant's request and determine if eligibility, loan repayment, and security requirements can be met.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 36 minutes per response.

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

*Estimated Number of Respondents:* 1,125.

*Estimated Number of Responses per Respondent:* 1.3.

*Estimated Total Annual Number of Responses:* 1,463.

*Estimated Total Annual Burden on Respondents:* 878 hours.

Once this information collection is approved, FSA will incorporate this collection into existing collections package 0560–0237.

*Title:* Direct Loan Servicing—Regular.

*OMB Control Number:* 0560–New.

*Type of Request:* New Collection.

*Abstract:* This information collection is required to support the proposed regulatory changes that include equine losses as eligible for EM. Some of the same information collection activities will be used that are currently approved for 7 CFR part 765, Direct Loan Servicing—Regular, which establishes the requirements related to routine

servicing actions associated with direct loans including Emergency loans.

Information collections established in the regulation are necessary for the Agency to monitor and account for loan security, including proceeds derived from the sale of security, and to process a borrower's requests for subordination or partial release of security. Information collections associated with the statutory requirement that borrowers be reviewed for graduation to commercial credit are also established in the regulation.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 49 minutes per response.

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

*Estimated Number of Respondents:* 48.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Number of Responses:* 48.

*Estimated Total Annual Burden on Respondents:* 39 hours.

Once this information collections request is approved, FSA will incorporate this collection into existing collections package 0560–0236.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of FSA's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

#### **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

#### 7 CFR Part 761

Accounting, Loan programs—agriculture, Rural areas.

#### 7 CFR Part 763

Agriculture, Banks, Banking, Credit, Loan programs—agriculture.

#### 7 CFR Part 764

Agriculture, Disaster assistance, Loan programs—agriculture.

For reasons discussed in the preamble, the Farm Service Agency (USDA) proposes to amend 7 CFR chapter VII as follows:

### PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

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

2. Revise the part heading for 7 CFR part 761 to read as shown above.

3. Amend § 761.2 paragraph (b) to add a definition, in alphabetical order, for “Land Contract” to read as set forth below.

#### § 761.2 Abbreviations and definitions.

\* \* \* \* \*

(b) \* \* \*

*Land contract* is an installment contract drawn between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

\* \* \* \* \*

4. Add part 763 to read as follows:

### PART 763—LAND CONTRACT GUARANTEE PROGRAM

Sec.

- 763.1 Introduction.
- 763.2 Abbreviations and definitions.
- 763.3 Full faith and credit.
- 763.4 Authorized land contract purpose.
- 763.5 Eligibility.
- 763.6 Limitations.
- 763.7 Application requirements.
- 763.8 Incomplete applications.
- 763.9 Processing complete applications.
- 763.10 Feasibility.
- 763.11 Maximum loss amount, guarantee period, and conditions.
- 763.12 Down payment, rates, and terms.
- 763.13 Fees.
- 763.14 Appraisals.
- 763.15 Taxes and insurance.
- 763.16 Environmental regulation compliance.
- 763.17 Approving application and executing guarantee.

- 763.18 General servicing responsibilities.
- 763.19 Contract modification.
- 763.20 Delinquent servicing and collecting on guarantee.
- 763.21 Establishment of Federal debt and Agency recovery of loss claim payments.
- 763.22 Negligence.
- 763.23 Terminating the guarantee.

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

#### § 763.1 Introduction.

(a) *Purpose.* The Land Contract Guaranteed Program provides certain financial guarantees to the seller in land transfers of farmland through a land contract sale to beginning farmers and socially disadvantaged farmers.

(b) *Types of guarantee.* The seller may request either of the following:

(1) *The prompt payment guarantee plan.* The Agency will guarantee an amount not to exceed three amortized annual installments plus an amount equal to the total cost of any related real estate taxes and insurance incurred during the period covered by the annual installment; or

(2) *The standard guarantee plan.* The Agency will guarantee an amount equal to 90 percent of the outstanding principal.

(c) *Guarantee period.* The guarantee period is 10 years for either plan.

#### § 763.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are in § 761.2 of this chapter.

#### § 763.3 Full faith and credit.

(a) The land contract guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by the seller, in which:

(1) The seller had actual knowledge of the fraud or misrepresentation at the time it became the seller, or

(2) The seller participated in or condoned the fraud or misrepresentation.

(b) Loss Claims also may be reduced or denied to the extent that any negligence contributed to the loss under § 763.22.

#### § 763.4 Authorized land contract purpose.

The Agency will only guarantee the contract installments, real estate taxes, and insurance; or outstanding principal balance for an eligible seller of a family farm, through a land contract sale to an eligible beginning or socially disadvantaged farmer.

#### § 763.5 Eligibility.

(a) *Seller eligibility requirements.* The private seller, and each entity member in the case of an entity seller, must:

(1) Possess the legal capacity to enter into a legally binding agreement;

(2) Not have provided false or misleading documents or statements during past or present dealings with the Agency;

(3) Not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718; and

(4) Not be suspended or debarred under 7 CFR part 3017.

(b) *Buyer eligibility requirements.* The buyer must meet the following requirements to be eligible for the Land Contract Guarantee Program:

(1) Is a beginning farmer or socially disadvantaged farmer engaged primarily in farming in the United States after the guarantee is issued.

(2) Is the owner and operator of a family farm after the contract is completed. In the case of an entity buyer:

(i) Each entity member's ownership interest may not exceed the amount specified in the family farm definition in § 761.2 of this chapter.

(ii) The entity members cannot themselves be entities.

(iii) The entity must be authorized to own and operate a farm in the State in which the farm is located.

(iv) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity must:

(A) Operate the farm and

(B) Own the farm;

(v) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must:

(A) Operate the farm; and

(B) Own the farm, or the entity itself must own the farm;

(3) Must have participated in the business operations of a farm or ranch for at least 3 years out of the last 10 years prior to the date the application is submitted.

(4) The buyer and all entity members in the case of an entity, must not have caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Act by debt write-down or write-off; compromise, adjustment, reduction, or charge off under the provisions of section 331 of the Act; discharge in bankruptcy; or through payment of a guaranteed loss claim on more than three occasions on or prior to April 4, 1996, or any occasion after April 4, 1996. If the debt forgiveness is resolved by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.

(5) The buyer and all entity members in the case of an entity, must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986 when the guarantee is issued.

(6) The buyer and all entity members in the case of an entity, may have no outstanding unpaid judgment awarded to the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(7) The buyer and all entity members in the case of an entity, must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(8) The buyer and all entity members in the case of an entity, must possess the legal capacity to enter into a legally binding agreement.

(9) The buyer and all entity members in the case of an entity, must not have provided false or misleading documents or statements during past or present dealings with the Agency.

(10) The buyer and all entity members in the case of an entity, must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718 of this chapter.

(11) The buyer and all entity members in the case of an entity must have an acceptable credit history demonstrated by satisfactory debt repayment.

(i) A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history.

(ii) Unacceptable credit history will not include:

(A) Isolated instances of late payments, which do not represent a pattern and were clearly beyond their control; or

(B) Lack of credit history.

(12) The buyer is unable to enter into a contract unless the seller obtains an Agency guarantee to finance the purchase of the farm at reasonable rates and terms.

(13) The buyer and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718.

(14) The buyer and all entity members in the case of an entity, must not be suspended or debarred under 7 CFR part 3017.

#### § 763.6 Limitations.

(a) To qualify for a guarantee, the purchase price of the farm to be acquired through the land contract sale cannot exceed the lesser of:

(1) \$500,000 or

(2) The current market value of the property.

(b) A guarantee will not be issued if the appraised value of the farm is greater than \$500,000.

(c) Existing land contracts are not eligible for the Land Contract Guarantee Program.

(d) Guarantees may not be used to establish or support a non-eligible enterprise.

#### § 763.7 Application requirements.

(a) *Seller application requirements.* A seller who contacts FSA with interest in a guarantee under the Land Contract Guarantee Program will be sent the land contract letter of interest outlining specific program details. To formally request a guarantee on the proposed land contract, the seller, and each entity member in the case of an entity, must:

(1) Complete, sign, date, and return the land contract letter of interest to the Agency, and

(2) Provide the name, address, and telephone number of the chosen servicing or escrow agent.

(b) *Buyer application requirements.* A complete application from the buyer will include:

(1) The completed Agency application form;

(2) A current Financial Statement (not older than 90 days);

(3) If the buyer is an entity:

(i) A complete list of entity members showing the address, citizenship, principle occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement for each member of the entity;

(iii) A current financial statement for the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (in good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the land contract guarantee and execute required debt, security and other instruments and agreements; and

(v) In the form of a married couple applying as a joint operation, items in paragraphs (b)(3)(i) and (b)(3)(iv) of this section will not be required. The

Agency may request copies of the marriage license, prenuptial agreement, or similar documents as needed to verify loan eligibility and security. The information specified in paragraphs (b)(2)(ii) and (iii) of this section are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication;

(4) A brief written description of the buyer's proposed operation;

(5) A farm operating plan;

(6) A brief written description of the buyer's farm training and experience;

(7) Three years of income tax and other financial records acceptable to FSA, unless the buyer has been farming less than 3 years;

(8) Three years of farm production records, unless the buyer has been farming less than 3 years;

(9) Verification of income and off-farm employment if relied upon for debt repayment;

(10) Verification of all debts;

(11) Payment of the credit report fee;

(12) Documentation of compliance with the environmental regulations in part 1940, subpart G, of this title;

(13) A copy of the proposed land contract; and

(14) Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and farm operating plan.

#### § 763.8 Incomplete applications.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the seller and buyer written notice of any additional information that must be provided. The seller or buyer, as applicable, must provide the additional information within 20 calendar days of the date of the notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of the second notice.

#### § 763.9 Processing complete applications.

Applications will be approved or rejected and all parties notified in writing no later than 30 calendar days after application is considered complete.

#### § 763.10 Feasibility.

(a) The buyer's proposed operation as described in a form acceptable to FSA must represent the operating cycle for the farm operation and must project a feasible plan as defined in § 761.2(b).

(b) The projected income, expenses, and production estimates:

(1) Must be based on the buyer's last 3 years actual records of production and

financial management unless the buyer has been farming less than 3 years;

(2) For those farming less than 3 years, a combination of any actual history and other reliable sources of information may be used. Sources must be documented and acceptable to the Agency; and

(3) May deviate from historical performance if deviations are the direct result of specific changes in the operation, reasonable, justified, documented, and acceptable to the Agency.

(c) Price forecasts used in the plan must be reasonable, documented, and acceptable to the Agency.

(d) The Agency will analyze the buyer's business ventures other than the farm operation to determine their soundness and contribution to the operation.

(e) When a feasible plan depends on income from sources other than from owned land, the income must be dependable and likely to continue.

(f) When the buyer's farm operating plan is developed in conjunction with a proposed or existing Agency direct loan, the two farm operating plans must be consistent.

**§ 763.11 Maximum loss amount, guarantee period, and conditions.**

(a) *Maximum loss amount.* The maximum loss amount of loss due to nonpayment by the buyer covered by the guarantee is based on the type of guarantee initially selected by the seller as follows:

(1) The prompt payment guarantee will cover:

(i) 3 amortized annual installments; or  
(ii) An amount equal to 3 annual installments (including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installments).

(2) The standard guarantee will cover an amount equal to 90 percent of the outstanding principal balance.

(b) *Guarantee period.* The period of the guarantee will be 10 years from the effective date of the guarantee unless terminated earlier under § 763.23.

(c) *Conditions.* The seller will select an escrow agent to service a Land Contract Agreement if selecting the prompt payment guarantee plan, and a servicing agent to service a Land Contract Agreement if selecting the standard guarantee plan.

(1) An escrow agent must provide the Agency evidence of being a bonded title insurance company, attorney, financial institution or fiscally responsible institution.

(2) A servicing agent must provide the Agency evidence of being a bonded

commercial lending institution or similar entity, registered and authorized to provide escrow and collection services in the State in which the real estate is located.

**§ 763.12 Down payment, rates, terms, and installments.**

(a) *Down payment.* The buyer must provide a minimum down payment of five percent of the purchase price of the farm.

(b) *Interest rate.* The interest rate charged by the seller must be fixed at a rate not to exceed FSA's direct farm ownership (FO) loan interest rate in effect at the time the guarantee is issued, plus three percentage points. The seller and buyer may renegotiate the interest rate for the remaining term of the contract following expiration of the guarantee.

(c) *Land contract terms.* The contract payments must be amortized for a minimum of 20 years and payments on the contract must be of equal amounts during the term of the guarantee.

(d) *Balloon installments.* Balloon payments are prohibited during the 10-year term of the guarantee.

**§ 763.13 Fees.**

(a) *Payment of fees.* The seller and buyer will be responsible for payment of any expenses or fees necessary to process the land contract agreement required by the State or county to ensure that proper title is vested in the seller including, but not limited to, attorney fees, recording costs, and notary fees.

(b) [Reserved]

**§ 763.14 Appraisals.**

(a) *Standard guarantee plan.* For the standard guarantee plan, the value of real estate to be purchased will be established by an appraisal obtained at Agency expense and completed as specified in § 761.7 of this chapter. An appraisal is required prior to, or as a condition of, approval of the guarantee.

(b) *Prompt payment guarantee plan.* The Agency may, at its option and expense, obtain an appraisal to determine value of real estate to be purchased under the prompt payment guarantee plan.

**§ 763.15 Taxes and insurance.**

(a) The seller will ensure that taxes and insurance on the real estate are paid timely and will provide the evidence of payment to the escrow or servicing agent.

(b) The seller will maintain flood insurance, if available, if buildings are located in a special 100-year floodplain as defined by FEMA flood hazard area maps.

(c) The seller will report any insurance claim and use of proceeds to the escrow or servicing agent.

**§ 763.16 Environmental regulation compliance.**

(a) *Environmental compliance requirements.* The environmental requirements contained in part 1940, subpart G, of this title must be met prior to approval of guarantee request.

(b) *Determination.* The Agency determination of whether an environmental problem exists will be based on:

(1) The information supplied with the application;

(2) Environmental resources available to the Agency including, but not limited to, documents, third parties, and government agencies;

(3) Other information supplied by the buyer or seller upon Agency request; and

(4) A visit to the farm.

**§ 763.17 Approving application and executing guarantee.**

(a) Approval is subject to the availability of funds, meeting the requirements in this part, and the participation of an approved escrow or servicing agent.

(b) Upon approval of the guarantee, all parties (buyer, seller, escrow or servicing agent, and Agency official) will execute the Agency's guarantee agreement.

(c) The "Land Contract Agreement for Prompt Payment Guarantee" or the "Land Contract Agreement for Standard Guarantee" will describe the conditions of the guarantee, outline the covenants and any agreements of the buyer, seller, escrow or servicing agent, and the Agency, and outline the process for payment of loss claims.

**§ 763.18 General servicing responsibilities.**

(a) For the prompt payment guarantee plan, the seller must use a third party escrow agent approved by the Agency. The escrow agent will:

(1) Provide the Agency a copy of the recorded land contract;

(2) Handle transactions relating to the land contract between the buyer and seller;

(3) Receive contract installment payments from the buyer and send them to the seller;

(4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;

(5) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;

(6) Notify the Agency and the seller if the buyer defaults;

(7) Service delinquent accounts as specified in § 763.20(a);

(8) Make demand on the Agency to pay missed payments;

(9) Send the seller any missed payment amount paid by the Agency under the guarantee;

(10) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the land contract and the status of payment; and

(11) Perform other duties as required by State law and as agreed to by the buyer and the seller;

(b) For the standard guarantee plan, the seller must use a third party servicing agent approved by the Agency. The servicing agent is required to:

(1) Provide the Agency a copy of the recorded land contract;

(2) Handle transactions relating to the land contract between the buyer and seller;

(3) Receive contract installment payments from the buyer and send them to the seller;

(4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;

(5) Perform a physical inspection of the farm each year during the term of the guarantee, and provide an annual inspection report to the Agency;

(6) Obtain from the buyer a current balance sheet, income statement, cash flow budget, and any additional information needed, perform, and provide the Agency an analysis of the buyer's financial condition on an annual basis;

(7) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the land contract and the status of payment;

(8) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;

(9) Notify the Agency and the seller if the buyer defaults;

(10) Service delinquent accounts as specified in § 763.20(b); and

(11) Perform other duties as required by State law and as agreed to by the buyer and the seller.

#### § 763.19 Contract modification.

(a) The seller and buyer may modify the land contract to lower the interest rate and corresponding amortized payment amount without Agency approval.

(b) With prior written approval from the Agency, the seller and buyer may modify the land contract provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible

plan can be reasonably projected throughout the remaining term of the guarantee. Such modifications may include, but are not limited to:

(1) Deferral of installments,

(2) Leasing or subleasing, and

(3) Partial releases. All proceeds from a partial release or royalties from mineral extraction must be applied to a prior lien, if one exists, and in addition, the same amount must be credited to the principal balance of the land contract.

(4) Transfer and Assumption. If the guarantee is to remain in effect, any transfer of the property and assumption of the guaranteed debt must be made to an eligible buyer for the Land Contract Guarantee Program as specified in § 763.4, and must be approved by the Agency in writing. If an eligible applicant for transfer and assumption cannot be found, the Deputy Administrator for Farm Loan Programs may make an exception to this requirement.

(5) Assignment. The seller may not assign the contract to another party without written consent of the Agency.

(c) Any contract modifications other than those listed above must be approved by the Deputy Administrator for Farm Loan Programs, and will only be approved if such action is determined permissible by law and in the Government's best financial interests.

#### § 763.20 Delinquent servicing and collecting on guarantee.

(a) *Prompt payment guarantee plan.* If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract or taxes or insurance when due, the escrow agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, taxes, or insurance and send a copy of the demand letter to the Agency and to the seller; and

(2) Must make demand on the Agency within 90 days from the original payment, taxes, or insurance due date, for the missed payment in the event the buyer has not made the payment.

(b) *Standard guarantee plan.* If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract, then the seller has the option of either liquidating the real estate, or having the amount of the loss established by the Agency by an appraisal of the real estate. For either option, the servicing agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, and send a copy of the

demand letter to the Agency and to the seller; and

(2) Must immediately inform the Agency which option the seller has chosen for establishing the amount of the loss, in the event the buyer does not make the payment within 60 days of the demand letter.

(i) *Liquidation method.* If the seller chooses the liquidation method, the servicing agent will:

(A) Submit a liquidation plan to the Agency within 120 days from the missed payment for approval prior to any liquidation action. The Agency may require and pay for an appraisal prior to approval of the liquidation plan.

(B) Complete liquidation within 12 months of the missed installment unless prevented by bankruptcy, redemption rights, or other legal action.

(C) Credit an amount equal to the sale price received in a liquidation of the security property, with no deduction for expenses, to the principal balance of the land contract.

(D) File a loss claim immediately after liquidation, which must include a complete loan ledger.

(E) Base the loss claim amount on the appraisal method if the property is reacquired by the seller, through liquidation.

(ii) *Appraisal method.* If the seller chooses to have the loss amount established by appraisal rather than liquidation, the Agency will complete an appraisal on the real estate, and the loss claim amount will be based on the difference between the appraised value at the time the loss is calculated and the unpaid principal balance of the land contract at that time.

(A) The only administrative appeal allowed under § 761.6 related to the resulting appraisal amount will be a determination of whether the appraisal is Uniform Standards of Professional Appraisal Practice (USPAP) compliant.

(B) The seller will give the Agency a lien on the security property in the amount of the loss claim payment. If the property sells within 5 years from the date of the loss payment for an amount greater than the appraised value used to establish the loss claim amount, the seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount to be repaid (recapture), the market value of the property may be reduced by the value of certain capital improvements made by the seller to the property in the time period from the loss claim to final disposition. If the property is not sold within 5 years from the date of the loss payment, the Agency will release the lien and the seller will have no further obligation to the Agency.

**§ 763.21 Establishment of Federal debt and Agency recovery of loss claim payments.**

(a) Any amount paid by FSA as a result of an approved loss claim is immediately due and payable by the buyer after FSA notifies the buyer that a loss claim has been paid to the seller. If the debt is not restructured into a repayment plan or the obligation otherwise cured, FSA may use all remedies available, including offset as authorized by the Debt Collection Improvement Act of 1996, to collect the debt.

(1) Interest on the debt will be at the FLP non-program credit sales real property loan rate in effect at the time of the first Agency payment of a loss claim.

(2) The debt may be scheduled for repayment consistent with the buyer's repayment ability, not to exceed 7 years. Before any payment plan can be approved, the buyer must provide the Agency with the best lien obtainable on all of the buyer's assets. This includes the buyer's ownership interest in the real estate under contract for guarantees using the prompt payment guarantee plan. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by individual members of the entity, including their ownership interest in the real estate under contract.

(b) Annually, buyers with an Agency approved repayment plan under this section will supply the Agency a current balance sheet, income statement, cash flow budget, complete copy of Federal income tax returns, and any additional information needed to analyze the buyer's financial condition.

(c) If a buyer fails to make required payments to the Agency as specified in the approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed as specified in § 766.351(c) of this chapter.

**§ 763.22 Negligence.**

(a) The Agency may deny a loss claim in whole or in part due to negligence that contributed to the loss claim. This could include, but is not limited to:

(1) The escrow or servicing agent failing to seek payment of a missed installment from the buyer within the prescribed timeframe or otherwise does not enforce the terms of the land contract;

(2) Losing the collateral to a third party, such as a taxing authority, prior lien holder, etc.;

(3) Not performing the duties and responsibilities required of the escrow or servicing agent;

(4) The seller's failing to disclose environmental issues; or

(5) Any other action in violation of the land contract or guarantee agreement that does not terminate the guarantee.

(b) [Reserved]

**§ 763.23 Terminating the guarantee.**

(a) The guarantee and the Agency's obligations will terminate at the earliest of the following circumstances:

(1) Full payment of the land contract;

(2) Agency payment to the seller of 3 annual installments plus property taxes and insurance, if applicable, under the prompt payment guarantee plan, if not repaid in full by the buyer. An Agency approved repayment plan will not constitute payment in full until such time as the entire amount due for the Agency approved repayment plan is paid in full;

(3) Payment of a loss claim through the standard guarantee plan;

(4) Sale of real estate without guarantee being properly assigned;

(5) The seller terminates the land contract for reasons other than monetary default; or

(6) If for any reason the land contract becomes null and void.

(b) If none of the events in paragraph (a) of this section occur, the guarantee will automatically expire, without notice, 10 years from the effective date of the guarantee.

**PART 764—DIRECT LOAN MAKING**

5. The authority citation for part 764 continues to read as follows:

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

6. Amend § 764.51 by revising paragraph (b)(3) to read as follows:

**§ 764.51 Loan application.**

\* \* \* \* \*

(b) \* \* \*

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, may be included in the applicant's written description. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years;

\* \* \* \* \*

7. Amend § 764.101 by revising paragraph (i)(3) to read as follows:

**§ 764.101 General eligibility requirements.**

\* \* \* \* \*

(i) \* \* \*

(3) *Farming experience.* For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, will be taken into consideration in determining loan eligibility. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.

\* \* \* \* \*

8. Amend § 764.102 by revising paragraph (f) to read as follows:

**§ 764.102 General limitations.**

\* \* \* \* \*

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation an Emergency Loan may cover qualified equine losses as specified in subpart H of this part.

9. Amend § 764.352 by adding paragraph (l) to read as follows:

**§ 764.352 Eligibility requirements.**

\* \* \* \* \*

(l) Whose primary enterprise is to breed, raise, and sell horses may be eligible under this part.

10. Amend § 764.353 by adding paragraph (g) to read as follows:

**§ 764.353 Limitations.**

\* \* \* \* \*

(g) Losses associated with horses used for racing, showing, recreation, or pleasure or loss of income derived from racing, showing, recreation, boarding, or pleasure are not considered qualified losses under this section.

11. Amend § 764.355 by revising paragraph (b) to read as follows:

**§ 764.355 Security requirements.**

\* \* \* \* \*

(b) EM loans made as specified in § 764.351(a)(2) and (b) generally must comply with the general security requirements established in §§ 764.103, 764.104 and 764.255(b). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:

- (1) Real Estate,
- (2) Chattels and crops, other than horses,

(3) Other assets owned by the applicant.

(4) Third party pledges of property not owned by the applicant, and

(5) Repayment ability under paragraph (c) of this section.

\* \* \* \* \*

12. Amend paragraph § 764.356 by adding paragraph (c) to read as follows:

**§ 764.356 Appraisal and valuation requirements.**

\* \* \* \* \*

(c) In the case of an equine loss loan:

(1) The applicant's Federal income tax and business records will be the primary source of financial information. Sales receipts, invoices, or other official sales records will document the sales price of individual animals.

(2) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production for those years for which the applicant does not have a complete year of business records.

Signed in Washington, DC, on September 17, 2010.

**Jonathan W. Coppess,**

*Administrator, Farm Service Agency.*

[FR Doc. 2010-23830 Filed 9-22-10; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2010-0854; Directorate Identifier 2009-NM-261-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Model A310 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed 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 High Time Equipment (HTE) reviews conducted within the scope of the

A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.

\* \* \* \* \*

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by November 8, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116,

Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2010-0854; Directorate Identifier 2009-NM-261-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On January 16, 2007, we issued AD 2007-02-22, Amendment 39-14909 (72 FR 3708, January 26, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007-02-22, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006-0111R1, dated August 26, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During High Time Equipment (HTE) reviews conducted within the scope of the A310 aircraft Design Service Goal (DSG) extension work, Airbus discovered that the splined couplings and the sliding bearings of the flap transmission system could be affected by corrosion and wear, especially when their protective components such as wiper rings and rubber gaiters could become defective.

This condition, if not detected and corrected, could degrade the functional integrity of the flap transmission system.