

# Proposed Rules

**Federal Register**

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

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 770

#### Rural Housing Service

#### Rural Business-Cooperative Service

#### Rural Utilities Service

#### Farm Service Agency

#### 7 CFR Parts 1823 and 1956

RIN 0560-AF43

### Loans to Indian Tribes and Tribal Corporations

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

**ACTION:** Proposed Rule.

**SUMMARY:** This rule proposes to consolidate into one part and to revise the Indian Tribal Land Acquisition Program (ITLAP) regulations to allow borrowers to use the loan reserve accounts to purchase additional real estate and to give borrowers additional servicing options. The proposed rule also would allow ITLAP funds to be used for certain refinancing activities; limit the requirement for reserve accounts to loans not secured by a general assignment of Tribal income; expand the uses borrowers may make of land purchased with ITLAP funds; require ITLAP loan applications, in most cases, include a copy of the borrower's option to purchase the land; and provide for subsequent loans to be made to ITLAP borrowers.

**DATES:** Comments on the proposed rule must be received on or before December 2, 1999 to be assured of consideration. Comments on the information collection requirements of this rule must be received on or before January 3, 2000 to be assured of consideration.

**ADDRESSES:** Mail comments on the proposed rule to: Veldon Hall, Director, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, S.W., STOP

0523, Washington, D.C. 20250-0523, fax number: (202) 690-0949, or hand deliver them to room 5449-South at that address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Gary West, Senior Loan Officer, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, S.W., STOP 0523, Washington, D.C. 20250-0523, telephone (202) 690-4008, facsimile (202) 690-0949, electronic mail: gwest@wdc.usda.fsa.gov.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agency has determined that this action does not affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

#### Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule.

#### Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

#### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act of 1995

The creation of 7 CFR part 770 set forth in this proposed rule requires review and approval of the information collection requirements by OMB under the provisions of chapter 35 of title 44 of the United States Code.

**Title:** 7 CFR 770 Indian Tribal Land Acquisition Program.

**OMB Control Number:** 0560-NEW

**Type of Request:** Approval of a new information collection.

**Abstract:** The information collected under OMB Number 0560-NEW, as identified above, is needed for Farm Service Agency (FSA) to effectively administer the regulations relating to the making and servicing of loans under the Indian Tribal Land Acquisition Program. The information is collected by the loan official in order to document the borrower's eligibility for loans and specific loan servicing actions. The

reporting requirements imposed on the public by the regulations contained in 7 CFR part 770 are necessary to administer the Indian Tribal Land Acquisition Program (ITLAP) loan program in accordance with statutory requirements (25 U.S.C. 488–494) consistent with commonly performed lending practices.

The proposed rule imposes information collection requirements on Native American Tribes seeking ITLAP loans or borrowers seeking loan servicing actions. In order to apply for an ITLAP loan, the applicant must provide information regarding its financial condition, ability to obtain other credit, plans for use of the land being purchased, plans for how it intends to repay the loan, loan security and purchase agreement for the land. If the borrower seeks loan servicing, the borrower must provide information regarding the financial condition of the tribe.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 18.50 hours per loan application, .25 hours per request for a reamortization, .25 hours per request for an interest rate reduction, and 2 hours per request for a debt write down.

*Respondents:* Native American Tribes.

*Estimated Number of Respondents:* 12.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 83 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Craig Nehls, Branch Chief, Farm Loan Programs Loan Servicing Division, FSA, USDA, 1400 Independence Avenue, S.W., STOP 0523, Washington, D.C. 20250–0523.

Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

#### **Federal Assistance Programs**

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance.

##### **10.421—Indian Tribes and Tribal Corporation Loans**

#### **Discussion of the Advanced Notice of Proposed Rulemaking**

On March 3, 1999, the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency published an Advance Notice of Proposed Rulemaking (ANPR) (64 FR 10235) soliciting comments to six issues relating to a possible revision of the debt relief regulations for ITLAP. In response to this request for public comment, 49 comments were received from ten commenters. Six commenters represented Native American Tribes, two commenters were individuals representing themselves, one commenter represented an Intertribal water rights coalition, and one commenter represented another Federal Government agency. The following is a summary of the comments received for each of the six issues:

1. Cancel the ITLAP debts in full. What criteria would be used to determine if a debt should be canceled?

Fourteen comments were received in response to this issue. One comment opposed reducing or canceling any ITLAP debt that is fully secured and collectable. Nine comments supported the cancellation of debt in some unspecified form; four comments supported a broad based cancellation of the debt; and two comments indicated that their Native American Tribes had already repaid more than they had originally borrowed and therefore should not have to pay any additional amounts.

2. Reduce the principal amount of the outstanding ITLAP debt to the present value of expected future annual rental value of the land purchased with ITLAP loan funds and set the annual ITLAP loan payment at the annual rent received or that could be received from this land.

Five comments were received in response to this issue. Two comments stated that the principal balance of such loans should be reduced to present value of future annual rents that could be generated on the land purchased

with loan funds; two comments supported the concept that loan payments should be adjusted to equal rental income received from land purchased with loan funds; and one comment supported a reduction in loan payments to equal 85 percent of the rents received on the land purchased by loan funds.

3. Restructure the loan by lowering the interest rate and reamortizing the balance of the loan over the remaining loan term.

Five comments were received in response to this issue which suggested that borrowers should be eligible for reamortizations, deferrals, and servicing options which are available to Farm Loan Program borrowers.

4. Release the assignment of income and substitute real estate mortgages on the land purchased with ITLAP funds. The regulation could provide that payment terms of the loans would be restructured at such time.

Two comments were received in response to this issue which indicated that the Agency should take mortgages as security for these in exchange for the general assignments of income that currently secure many of these loans.

5. Consider the changes in Tribal revenues from all sources and grant a corresponding reduction in the loan principal.

Six comments were received on this issue. Five comments supported the provisions of debt relief based on socioeconomic condition of the Tribe; and one comment proposed that debt relief should be based on decreases in Federal funding.

6. Grant deferrals of annual payments if the income loss is temporary.

One comment was received on this issue which recommended that debt relief should be provided when a producer who rents land from the borrower suffers a reduction in commodity prices.

In addition to the above listed comments, the Agency received 16 comments on other issues related to ITLAP. One comment suggested that debt relief should be provided, if the making of the loan payments by the borrower will impede the borrower's ability to resolve fractional land interests on the reservation; one comment stated that debt relief should be provided if the making of loan payments impedes the borrower's ability to repay other loans or meet other Tribal needs; three comments indicated that debt relief should not be conditioned on whether the loan has been accelerated; one comment suggested that independent legislation would be needed to authorize additional

debt relief options; seven comments indicated that the Agency should take action without promulgating new regulations since such regulations are not necessary and would violate Executive Order (E.O.) 13084; two comments indicated that the Agency's concerns regarding the budgetary impacts of providing debt relief to borrowers were misplaced because such relief would enable borrowers to purchase more fractional interests and thus reduce the overall Federal Government's costs in tracking these fractional interests; and one comment indicated that funding for the loan program should be provided to the full program authorization level of \$50 million.

Based on a review of the comments, the Agency has reached the following conclusions which, in part, formed the basis for the proposed changes to the debt relief provisions of ITLAP contained in this proposed rule:

In response to the comments that suggested the Agency adopt a policy of canceling ITLAP debt, the Agency cannot justify the simple cancellation of ITLAP debt with respect to the program's current borrowers. Such an action would be inconsistent with the intent of the program which is to provide loan financing to Native American Tribes for the purchase of reservation land. Such a change would move the program from a loan program to a grant program. When Congress amended the ITLAP legislation to authorize debt relief, it tied such relief to changes in the value of the land. (Sec. 303 of Pub. L. 101-82) In this amendment, Congress did not suggest or encourage the Agency use its debt settlement authorities to provide broad debt relief. Further, none of the comments provided specific criteria to support when such cancellations of debt should take place and none of the comments addressed the issue that providing such relief to those with recent loans would be unfair to those who have already repaid substantial portions of their debt. Finally, providing such relief could jeopardize the future of this program. At a minimum, as indicated in the ANPR, if such relief is not clearly limited, it could substantially increase the projected costs for future ITLAP loans which would mean that under the Credit Reform Act of 1990 the Agency would have fewer program loan funds available for such loans, even if the appropriation level of the program remains unchanged. Therefore, the Agency has concluded that at this point, the option of broadly canceling ITLAP debts should not be pursued. However, the

Agency will accept more comments on this issue in response to this proposed rule.

In response to the comments that recommended the Agency allow an ITLAP borrower whose loan is secured by an assignment of income to substitute as security for the loan a mortgage on the land purchased with ITLAP funds, the Agency does not, at this point, propose a change to the ITLAP regulations to allow for such a substitution. The Agency has experienced a very low delinquency rate with respect to ITLAP loans secured by an assignment of income. Further, before an ITLAP loan may be secured with an assignment of income, the Agency must first determine that such security would be superior to taking a mortgage on the purchased land. In many of these cases taking security in the form of a mortgage is not practical because the ITLAP funds are being used to purchase fractional interests in land. A mortgage on such fractional interests would not provide the Agency with adequate security for the loan. Therefore, the Agency, at this time, does not believe that such a change would be in the best interests of the program. However, the Agency will take additional comments on this issue in response to this proposed rule.

The Agency received comments with respect to issues 2, 5, and 6 that suggested in a variety of ways that the ITLAP regulations should be changed to allow for debt relief if rental value of the land could not generate enough income to equal the ITLAP loan payments. In addition, the Agency received comments that debt relief should be provided to borrowers that are suffering a loss of revenue, facing severe socio-economic problems and having difficulties in meeting the basic needs of its members. Specifically, these comments taken together indicate that some Native American Tribes, over an extended period of time, are having to take funds needed from other high priority activities to make ITLAP loan payments. The Agency has determined that debt relief to an ITLAP borrower could be extended to those borrowers forced to use scarce Tribal assets needed to fight long term socio-economic problems to make ITLAP loan payments. The proposed rule contains a provision that would allow, under certain circumstances, an ITLAP loan be written down once to a level where ITLAP annual loan payments equal the previous five year average annual rental payment for the land purchased by loan funds, if the Native American Tribe is facing certain socio-economic problems. However, a Native American Tribe

could receive the benefit of such a write down regarding its ITLAP loans only once. Such a write down could involve as many ITLAP loans of the Tribe as meet the criteria under this regulation at the time of the write down application. Further, in response to comments received, the availability of this proposed form of debt relief will not be conditioned on the acceleration of the loan.

The Agency received comments that ITLAP borrowers should have the same servicing options (codified at 7 CFR part 1951, subpart S) and debt settlement options (codified at 7 CFR part 1956) as Farm Loan Program (FLP) borrowers with Farm Ownership, Farm Operating, and Emergency loans.

Based on a review of the FLP loan making and servicing procedures, we have determined that loan making and servicing procedures for farmers and ranchers are not consistent with the statutorily established purposes of ITLAP. The purpose of FLP loans is to assist farming and ranching operations in becoming economically successful. Conversely, the statutory purpose of ITLAP loans is to assist Native American Tribes in the purchase of land and interests in land for the purpose of consolidating their ownership of land within their reservations regardless of the economic use such Tribe may make of the land. Thus, FLP loans made to farmers and ranchers versus ITLAP loans made to Native American Tribes are substantially different in the types of borrowers being targeted, the importance of how the borrower's operation is structured, and the importance of the economic viability of the project being funded. In order to accomplish the purpose of these respective loan programs, the servicing options offered to borrowers under each program must be different and tailored to the distinct purposes of these programs.

With respect to debt settlement, the security for most ITLAP loans is a general assignment against Tribal income and not a mortgage on the property purchased with ITLAP funds. Therefore, since the security for these loans in most cases has nothing to do with the purchased land or the operations on the purchased land, the debt settlement regulations at 7 CFR part 1956 which are premised, to the extent possible, on maintaining the economic viability of operations on the land will not work with ITLAP borrowers. Based on this analysis, in the proposed rule we have created loan servicing and debt settlement provisions that are specially tailored and unique to ITLAP.

The Agency received comments that it should proceed with consideration of additional debt relief options for ITLAP borrowers through informal rulemaking, because such actions violate E.O. 13084. These comments indicated that this E.O. obligates the Secretary of Agriculture to take actions to assist Native American Tribes while waiving the normal regulatory requirements to take such actions. The Agency agrees with these comments that the E.O. does place an obligation on the Secretary of Agriculture to take steps wherever possible to assist Native American Tribes. As indicated in the ANPR the Agency is re-examining ITLAP to determine if there are ways in which the Agency can provide more debt relief options to borrowers. The Agency, however, does not agree that the E.O. would allow the Agency to implement such policy changes in violation of the requirements of notice and comment rulemaking requirements in section 553 of title 5, United States Code or the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation (36 FR 13804). Further, while the notice and comment informal rulemaking process may take additional time, this process will give all interested parties, including affected Native American Tribes, the opportunity to participate in the development of this regulation to ensure their interests and concerns are heard prior to the implementation of any policy change. Therefore, the Agency has determined to proceed with the consideration and development of ITLAP debt relief changes through the notice and comment rulemaking process. In response to the concerns expressed that any additional debt relief changes to ITLAP should be made as soon as possible, the comment period for this proposed rule has been reduced from the standard 60-day time frame to 30 days to expedite the implementation of this rule.

The Agency received several comments that disagreed with the Agency's concerns expressed in the ANPR that the consideration of the impact on the Federal budget any ITLAP debt relief proposal is important. These comments indicated that any additional costs to the Federal Government by providing additional debt relief to ITLAP borrowers, which would enable such borrowers to purchase more fractional interests, would be offset by the reduction in costs to the Federal Government to administer programs on Native American reservations. We do not have any information that would

support the contention that the costs of providing additional ITLAP debt relief would be offset by other reductions in the cost of administering Federal Government programs on Native American reservations.

Therefore, the Agency is proposing to allow certain ITLAP loans to be written down to a value where the annual loan payment will equal the average annual rental income that could be generated from the land if the borrower can demonstrate based on criteria established in the proposed rule that over an extended period of time, the Native American Tribe is facing other economic burdens which are being exacerbated as a result of the fact that the ITLAP loan payments exceed the long term income producing value of the land.

#### Discussion of the Proposed Rule

Pub. L. 91-229 (25 U.S.C. 488-494) authorized the Secretary of Agriculture to establish ITLAP. This program was administered by the former Farmers Home Administration (FmHA) to make loans to Native American Tribes and Tribal corporations to acquire land and fractional interests in land on the Tribes' reservations. Under the authority of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354, on October 20, 1994, FmHA's ITLAP functions were transferred to the FSA. Regulations for implementing this program are found at 7 CFR part 1823, subpart N for loan making; 7 CFR part 1951, subpart E for loan servicing; and 7 CFR part 1956, subpart C, for debt settlement. The proposed rule would consolidate the ITLAP regulations into one part and clarify that this program is exclusively administered by FSA.

The proposed rule would limit the circumstances when a reserve account would be required to secure an ITLAP loan to those loans not adequately secured by a general assignment of Tribal income. With respect to loans that are not delinquent and that are presently adequately secured by a general assignment of Tribal income, the Agency will release its interest in such funds and allow them to be returned to the Native American Tribe or Tribal corporation. During our review of ITLAP in preparation of this proposed rule, the Agency determined that a general assignment of Tribal income may provide the Agency sufficient security for ITLAP loans. The additional security provided by the reserve account is unnecessary. ITLAP loans secured by an assignment of income have a very low delinquency rate. Only in a handful of cases has the Agency sought to

recover an ITLAP loan payment from the reserve account.

The proposed rule also would allow Native American Tribes and Tribal corporations with remaining ITLAP loans secured by a mortgage to use their reserve accounts to purchase additional land consistent with ITLAP, which would be added to the mortgage securing the loan. With this change, the Agency would allow borrowers the use of this reserve account to purchase additional land that could increase its future income. The proposed rule would require the reserve funds be placed in Federally insured interest bearing accounts. We believe that these changes are consistent with the intent of ITLAP to assist Native American Tribes and Tribal corporations to consolidate their ownership in reservation lands and to encourage the rapid build up of the reserve accounts in those cases when they are required.

The proposed rule would also expand the use of ITLAP loan funds to include refinancing of an existing debt incurred by the Native American Tribe or Tribal corporation to purchase land provided: (1) The loan application was received and the Agency approved a land acquisition proposal for the land at issue, prior to the purchase of the land, (2) the Native American Tribe or Tribal corporation was not able to obtain an option on the land, (3) the debt to be refinanced is short term debt with a balloon payment that cannot otherwise be refinanced with the creditor, and (4) the debt secured by the land subject to the refinancing must otherwise meet the requirements of ITLAP.

The proposed rule would allow certain ITLAP loans to be written down to a value where the annual loan payment would equal the 5-year average rental value for the land purchased with such loan funds if the borrower could establish that the Native American Tribe was facing economic hardships based on a combination of certain criteria. Such a write down could involve as many ITLAP loans of the Tribe as meet the criteria under this regulation at the time of the write down application. This proposed amendment is based on comments received in response to the ANPR published on March 3, 1999, previously discussed.

The proposed rule would clarify the process under which the Agency will reduce the interest rate of an ITLAP loan to the interest in effect at the time of application for such a reduction. Such a reduction will take place if the ITLAP loan has been in effect for more than 5 years.

The proposed rule would make several other changes to the ITLAP. The

proposed rule would clarify the approved uses of land that are the subject of an ITLAP loan to ensure that the Agency's mortgage on the land is protected by requiring Agency approval prior to such land being either leased, sold, or exchanged. The proposed rule would clarify that a subsequent ITLAP loan may be made to a borrower for the same purposes and under the same conditions as a prior loan. The proposed rule would require that prior to obtaining an ITLAP loan, the Native American Tribe or Tribal corporation obtain an option or other acceptable purchase agreement to purchase the land at issue and that a copy of such agreement accompany the ITLAP loan application. The purpose for this change is to allow the Agency to have all relevant information regarding the land purchase for which ITLAP loan funds are being sought. The proposed rule would, under limited circumstances, allow a reamortization of an ITLAP loan beyond 40 years. Debt settlement of ITLAP loans will be handled in accordance with the general government-wide debt collection standards at 4 CFR parts 101–105 and the USDA regulations at 7 CFR part 3, subpart B.

#### List of Subjects

##### 7 CFR Part 770

Credit, Indians, Loan programs—agriculture.

##### 7 CFR Part 1823

Credit, Grazing lands, Indians, Loan programs—agriculture, Rural areas, Soil conservation.

##### 7 CFR Part 1956

Accounting, Loan programs—agriculture, Rural areas.

Accordingly, for the reasons stated in the preamble, the Farm Service Agency proposes to add 7 CFR part 770 and amend 7 CFR parts 1823 and 1956 as follows:

1. Part 770 is added to read as follows:

#### **PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS**

Sec.

- 770.1 Purpose
- 770.2 Definitions.
- 770.3 Eligibility for a loan.
- 770.4 Eligible uses of loan funds.
- 770.5 Loan limitations.
- 770.6 Rates and terms.
- 770.7 Security.
- 770.8 Use of acquired land.
- 770.9 Special Requirements.
- 770.10 Servicing.

**Authority:** 5 U.S.C. 301, 25 U.S.C. 490.

#### **§ 770.1 Purpose.**

This part contains policies and procedures of the Agency for making and servicing loans to assist a Native American Tribe with the acquisition of land interests within the Tribal reservation or Alaskan community.

#### **§ 770.2 Definitions.**

*Agency* means the Farm Service Agency and includes any successor agency.

*Appraisal* means an appraisal for the purposes of determining the market value of land (less value of any existing buildings that pass with the land) that meets the requirements of the Uniform Standards of Professional Appraisal Practice consistent with part 1922 of this title and by an appraiser approved by the Agency.

*Applicant* means a Native American Tribe or Tribal corporation seeking a loan under this part.

*Loan funds* means money loaned under this part.

*Native American Tribe* means:

- (1) An Indian Tribe recognized by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

*Reservation* means lands or interests in land within:

- (1) The Native American Tribe's reservation as determined by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

*Tribal corporation* means a corporation established pursuant to the Indian Reorganization Act.

#### **§ 770.3 Eligibility for a loan.**

To be eligible for a loan under this part, an applicant shall:

- (a) File an application with the Agency on a form approved by the Agency;
- (b) Be a Native American Tribe or a Tribal corporation of a Native American Tribe without adequate uncommitted funds, based on Generally Accepted Accounting Principals, to acquire lands or interests therein within the Native American Tribe's reservation for the use of the Native American Tribe or Tribal corporation or the members of either;
- (c) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms;
- (d) Waive immunity from suit or liability and provide necessary information to private, commercial and government lenders in order to determine if the applicant meets the credit requirements of this part; and

(e) Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing:

- (1) A feasibility plan for the use of the Native American Tribe's land and other enterprises and funds from any other source from which payment will be made;
- (2) A satisfactory management and repayment plan; and
- (3) A satisfactory record for paying obligations.

#### **§ 770.4 Eligible uses of loan funds.**

(a) *Land.* Loan funds may be used to acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding buildings) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American Tribe's reservation which will be used for the benefit of the Tribe or its members.

(b) *Costs of acquiring the land.* Loan funds may be used to pay costs incidental to land acquisition, such as those for title clearance, legal services, land surveys, and loan closing.

(c) *Refinancing existing debt.* Loan funds may be used to refinance non-United States Department of Agriculture preexisting debts the Native American Tribe or Tribal corporation incurred to purchase the land if the following conditions exist:

- (1) Prior to the acquisition of such land, the Native American Tribe or Tribal corporation shall file a loan application regarding the purchase of such land and receive the Agency's approval for the land purchase;
- (2) The Native American Tribe or Tribal corporation could not have acquired an option on such land;
- (3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the Native American Tribe or the Tribal corporation and that cannot be extended or modified to enable the Native American Tribe or Tribal corporation to satisfy the obligation; and

(4) The purchase of such land must be consistent with all other applicable requirements of this part.

(d) *Appraisal costs.* Loan funds may be used to pay for the costs of any appraisals that may be conducted pursuant to this part.

#### **§ 770.5 Loan limitations.**

(a) *Land improvement and development costs.* Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property,

payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further explained in exhibit M of subpart G of part 1940 of this title.

(b) *Loan funds may not exceed value of the land.* The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by the Agency.

(c) *Time limit for loan disbursement.* Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

(d) *Sale of non-renewable assets.* The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the assets sold.

#### **§ 770.6 Rates and terms.**

(a) *Term.* Except as provided in § 770.10(c), each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.

(b) *Interest rate.* The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing. Except as provided § 770.10(b), the interest rate will be constant for the life of the loan.

#### **§ 770.7 Security.**

A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan under this part unless the Agency determines that an assignment of income from the applicant provides as good or better security. If an assignment of income is to be taken as the sole security for the loan, the prior approval of the Administrator is required.

#### **§ 770.8 Use of acquired land.**

(a) *In general.* Land acquired with loan funds, or other property serving as the security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided the Agency provides prior written approval of the action, if the Agency determines that the borrower's loan obligations to the Agency are adequately secured and the borrower's ability to repay the loan is not impaired.

(b) *Land exchanges.* In the case where the borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the

unpaid principal balance of the loan, will be required unless the Agency determines any remaining land or other loan security is adequate security for the loan.

#### **§ 770.9 Special requirements.**

(a) *Loan authorizations.* The Native American Tribe or Tribal corporation will take appropriate action to obtain and prove security for the loan.

(b) *Right to mortgage.* If a mortgage is to be obtained on trust or restricted land with respect to a loan under this part and the Native American Tribe's or Tribal corporation's constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by Tribal referendum. All mortgages of trust or restricted land must be approved by the Department of the Interior.

(c) *Waiver of immunity.* Prior to loan closing, the appropriate Tribal officials will execute on behalf of the Native American Tribe or Tribal corporation and in favor of the Agency, a waiver of immunity for the loan being made, which waiver has been approved by the Department of the Interior.

(d) *Reserve accounts.* (1) *Creation of reserve account.* In the case of a loan not adequately secured by a general assignment of Tribal income, funds will be collected from the borrower and deposited into a Federally insured, interest bearing reserve account at the rate of 10 percent of the annual payment per year under each loan authorized under this part until the reserve account has accumulated an amount equal to one year's installment for each loan made to the borrower under this part.

(2) *Use of reserve funds.* (i) *Loan security.* The funds in the reserve account will be available to further secure the loan made to the borrower under this part.

(ii) *Purchase additional land.* The Agency shall allow a borrower to use some or all of the reserve account for additional land purchases under terms and conditions consistent with the requirements of this part provided the loan is not delinquent or likely to become delinquent and any land purchased shall be added to the property that secures the loan.

(iii) *Make an installment payment.* Reserve funds may be used to make an installment payment for a loan made under this part, if the borrower lacks other financial resources to make such a payment.

(e) *Subsequent loan.* A subsequent loan may be made to a borrower for the same purposes and under the same conditions as the initial loan made to the borrower under this part.

(f) *Options.* Except for refinancing activities authorized in § 770.4(c), the applicant shall obtain an option or other acceptable purchase agreement for land to be purchased with loan funds, and such agreement shall be included with the application for loan funds.

(g) *Cost of appraisals.* The applicant or the borrower, as appropriate, will pay the cost of all appraisals required under this part.

#### **§ 770.10 Servicing.**

(a) *Reamortization.* (1) *Eligibility for reamortization.* The Agency may approve a reamortization of a loan under this part if:

(i) The account is delinquent and cannot be brought current within 1 year; or

(ii) The account is current, but due to circumstances beyond the control of the borrower, the borrower will be unable to meet the annual loan payments.

(2) *Terms of reamortization.* The term of a loan may not be extended unless:

(i) Reamortization within the remaining term of the loan would increase the annual payment to such an extent that the borrower cannot meet its obligations; and

(ii) No intervening lien exists on the security for the loan.

(3) *Consolidation of Notes.* If one or more notes are to be reamortized, consolidation of the notes is authorized.

(b) *Interest rate reduction.* The Agency shall, at the borrower's request, reduce the interest rate for an existing loan made under this part to the current interest rate for such loans if the loan was made more than 5 year prior to the application for the interest reduction and the Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (c)(2)(ii) of this section.

(c) *Debt write down.* (1) *Application.* A borrower may apply for a write down under either the land value or rental value option or both options provided in this paragraph. If the borrower applies for a land value write down, the borrower must provide a current appraisal of the land purchased with the loan funds at the time of application. If the borrower applies and is determined eligible for a land value and a rental value write down, the borrower will receive a write down based on the write down option that provides the greatest debt reduction.

(2) *Eligibility.* To be eligible for a write down under this paragraph, the borrower (in the case of a Tribal corporation, the Native American Tribe of the borrower) must:

(i) Be located in a county which is listed as a persistent poverty county by the Economic Research Service pursuant to the most recent data from the Bureau of the Census; and

(ii) Have a socio-economic condition over the immediately preceding 5 year period that meets at least two of the following factors as certified by the Native American Tribe and the Department of the Interior:

(A) The Native American Tribe has experienced a decrease, on a per capita basis, in State and Federal funding of more than 15 percent;

(B) The Tribal gross income, on a per capita basis, has declined by more than 20 percent;

(C) The Native American Tribe has incurred increased costs associated with unfunded or partially funded mandates from Federal or State Governments equal to more than 15 percent of the total amount received from Federal or State sources; and

(D) The Native American Tribe has incurred an increase in costs of meeting the public health and safety needs of Tribal members of more than 20 percent.

(3) *Land value write down.* The Agency may adjust the unpaid principal and interest balance on any loan made under this part to the current market value of the land that was purchased with loan funds, if:

(i) The market value of such land has declined by at least 25 percent since the land was purchased with loan funds as established by an appraisal;

(ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;

(iii) The land on which the principal write down is requested has been held by the borrower for at least 5 years; and

(iv) The loan has not been written down under paragraph (d)(3) of this section within the last 5 years.

(4) *Rental value write down.* The Agency may write down loans made under this part so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the immediately preceding 5-year period if:

(i) The land that was purchased with loan funds was purchased more than 5 years prior to the application for such writedown;

(ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5 year average annual rental value of the land have been certified by the Department of the Interior;

(iii) The borrower provides a current appraisal of the land; and

(iv) The borrower (in the case of a Tribal corporation, the Native American Tribe of the borrower) has not previously benefitted from a write down under paragraph (d)(3) of this section.

#### **PART 1823—[REMOVED AND RESERVED]**

2. Remove and reserve part 1823.

#### **PART 1956—DEBT SETTLEMENT**

3. The authority citation for part 1956 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

#### **Subpart C—Debt Settlement—Community and Business Programs**

##### **§ 1956.101 [Amended]**

4. Amend § 1956.101 to remove the phrase "and Indian Tribal Land Acquisition loans;"

##### **§ 1956.137 [Removed and Reserved]**

5. Remove and reserve § 1956.137.

Signed at Washington, D.C., on October 21, 1999.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

[FR Doc. 99-28368 Filed 11-01-99; 8:45 am]

BILLING CODE 3410-05-P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 97-ANE-09]

#### **Airworthiness Directives; Rolls-Royce plc Model RB211 Trent 892, 884, 877, 875, and 892B Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration, DOT.

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

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), 97-06-13, applicable to certain Rolls-Royce plc (R-R) RB.211 Trent 800 series turbofan engines, that currently requires initial and repetitive inspections of the angled drive upper shroud, the intermediate gearbox housing (IGH), and the external gearbox lower bevel box (LBB) housing. In addition, that AD requires initial and repetitive master magnetic chip detector (MCD) inspections. Finally, prior to initiation of Extended-Range Operations with Two-Engine Aircraft (ETOPS), or prior to September 30, 1997, whichever

occurs first, AD 97-06-13 requires installation of a redesigned angled drive upper shroud tube and a lower splitter fairing with revised sealing. This action would eliminate the repetitive inspections of the IGH, external gearbox LBB housing, and the angled drive upper shroud, if the engines have incorporated modifications described in certain R-R Service Bulletins (SBs). In addition, this action would increase the inspection interval for repetitive master MCD inspections. This proposal is prompted by service experience since publication of AD 97-06-13. The actions specified by the proposed AD are intended to prevent loss of oil, which could cause an engine fire. This proposed AD is also intended to prevent in-flight engine shutdowns and airplane diversions caused by oil loss and bearing failures.

**DATES:** Comments must be received by January 3, 2000.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-09, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230-3995, fax (317) 230-4743. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7747, fax (781) 238-7199.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date