

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Part 1945

RIN 0560-AF72

### Streamlining of the Emergency Farm Loan Program Loan Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Farm Service Agency (FSA) proposes to amend regulations to streamline the Emergency loan requirements to make them clearer and to reduce administrative burdens on FSA and borrowers.

**DATES:** Comments on the proposed rule must be received on or before November 13, 2000 to be assured of consideration. Comments on the information collection requirements of this rule must be received on or before November 13, 2000 to be assured of consideration.

**ADDRESSES:** Submit written comments to the Director, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250-0522.

**FOR FURTHER INFORMATION CONTACT:** Mike Hinton, Branch Chief, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250-0522 telephone (202) 720-1632; or e-mail: mike\_hinton@wdc.fsa.usda.gov.

### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This rule has been determined to be significant under Executive Order 12866

and has been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

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 small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

#### Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G. It has been determined that this action does not affect the quality of human environment. Therefore, an Environmental Impact Statement is not required.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, civil justice reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. It will not affect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before bringing any action for judicial review.

#### Executive Order 12372

The programs within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983).

### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined in Title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements included in the proposed rule have been submitted for approval to OMB.

*Title:* Emergency Loans.

*OMB Control Number:* 0560-0159.

*Expiration Date:* March 31, 2001.

*Abstract:* The information collected under this rule is needed for FSA to effectively make and service Emergency loans. The reporting requirements imposed by the proposed rule are necessary to administer Emergency loans in accordance with statutory requirements of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) consistent with commonly performed lending practices.

In order to apply for an Emergency loan, the applicant must provide information regarding the farming operation, financial condition, ability to obtain other credit, plans for how it intends to repay the loan, and loan security. If the borrower seeks loan servicing, the borrower must provide information regarding the financial condition of the borrower.

The purpose of the proposed rule is to streamline the requirements for making an Emergency loan to enable FSA to more rapidly and efficiently make Emergency loans to qualified applicants.

*Type of Request:* Revision and Extension of a Currently Approved Information Collection Package.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2.94 hours per loan application.

*Respondents:* Farmers and ranchers: 4,664.

*Estimated Number of Respondents:* 6,895.

*Estimated Number of Responses per Respondent:* 2.34.

*Estimated Total Annual Burden on Respondents:* 13,714 hours.

Comments are solicited on the proposed information collection and recordkeeping to assist FSA to: (a) Evaluate 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) evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhance the quality, utility and clarity of the information to be collected; and (d) 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, DC 20503 and to Mike Hinton, Branch Chief, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250-0522. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of the proposed rule. 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 program as listed in the Catalog of Federal Domestic Assistance under No. 10.404—Emergency Loans.

#### **Background**

The current Emergency loan program has been in effect since 1978. There have been numerous changes to the program in subsequent years. The Agency has reviewed the current regulations and determined that they should be streamlined to reduce the burden on the applicant. Recent statutory changes also have required revisions to the regulations to ensure that they reflect statutory requirements.

The proposed rule will revise the documentation requirement of the credit

elsewhere test to reduce the burden of this requirement on applicants in accordance with section 322 of the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1962). The current regulations contain requirements regarding obtaining written rejections of credit from the local community that exceed those required by the Act. Under the proposed rule, these requirements have been reduced to more accurately reflect the minimum requirements of the Act and to focus these requirements on applications for larger loans and from applicants with substantial net worth. This proposed rule provides that in the case of loans in excess of \$300,000 where the applicant's net worth is in excess of \$1,000,000, the applicant must obtain three written declinations of credit and at least one of which must be from a lender outside the normal trade area of the applicant. The purpose for requiring a declination of credit outside the normal trade area is to ensure that an applicant with a substantial net worth seeking a large loan has made the fullest effort to obtain credit from another source within the reasonable proximity. For the remaining applicants, the requirements for obtaining written declinations of credit have been reduced to two in the case of loans in excess of \$300,000 and to one in the case of loans less than \$300,000. The proposed rule also will add a provision that permits waiver of the documentation of credit elsewhere when the loan is for less than \$100,000, if the Agency determines this requirement would pose an undue burden on the applicant and credit is not likely to be available based on the applicant's circumstances.

The proposed rule also will simplify the process for calculating qualifying production losses for which an applicant may seek an Emergency loan. The current regulation has a very complex set of formulas for determining qualifying production losses. As a result, the current process consumes substantial amounts of time for FSA and the applicant before FSA can determine if the applicant is eligible and, if eligible, how much may be borrowed. The Agency proposes to calculate the eligible production loss as the difference between the production level for the disaster year and the production history for the crops on the farm. The production history for the farm will be based on crop insurance and FSA data. In cases where sufficient production history is not available, the 3 year county production average for the crop will be used. In addition, in order to provide more assistance to borrowers,

the proposed rule will exercise FSA discretion in section 329 of the Act (7 U.S.C. 1970) to increase the loan level for production loss Emergency loans from 80 percent to 100 percent of the eligible production loss.

The proposed rule provides that a borrower may use the proceeds of a production loss Emergency loan for the purposes of replacing working capital lost as a result of the disaster. In the current regulation, replacement of working capital is not a specifically stated authorized use of loan funds. Over the years, however, FSA has determined that in responding to a disaster a borrower not only may experience a loss in production of the crop, but also may have to devote working capital set aside for the production of crops for other purposes in response to the disaster. Section 323 of the Act (7 U.S.C. 1963) provides that Emergency loans can be used for the same purposes as operating and real estate loans. Section 312 (a)(10) of the Act (7 U.S.C. 1942 (a)(10)), in turn, provides that operating loans may be used for "other farm, ranch, or home needs". The proposed rule clarifies that production loss Emergency loans may be used for other farm, ranch, or home needs, including but not limited to the replacement of working capital lost.

Under the proposed rule, livestock losses will be treated as a physical loss instead of a production loss as under the current rule. This change will simplify the loss calculation for livestock by allowing FSA to value the livestock lost instead of attempting to apply a production formula which is more applicable to crop production than to the production of livestock. This change also will remove livestock and livestock products losses from the requirement that they must reach a 30 percent yield loss threshold as required for all production losses. This change is based on the conclusion that yield loss thresholds are not readily determinable or relevant in the livestock context. Therefore, FSA has determined to simply use the loss of livestock or production itself as the basis for determining the loss for loan eligibility purposes.

The proposed rule will make a conforming change to the use of loan proceeds in the case of farming operations that have suffered a physical loss of livestock. The proposed rule will allow the borrower to pay essential family household expenses from the proceeds of a physical loss Emergency loan. Under the current rule, livestock operations are able to pay essential family household expenses from loan proceeds because the losses are treated

as production losses. The proposed rule will retain the ability for those with production loss loans to use loan proceeds for essential family household expenses; however, under the proposed rule, since livestock and livestock product losses are treated as physical losses, a change was needed to allow such livestock operations to use physical loss loan proceeds to pay essential family household expenses.

The proposed rule will specifically allow the costs of restoring perennials the produce an agricultural commodity to their pre-disaster condition as an eligible purpose for physical loss loans for the losses to chattel. Exhibit D to 7 CFR part 1945, subpart D, currently provides that such loans may be used to pay the costs for restoring or rehabilitating damaged citrus trees over a period of up to five years. Section 1945.163 (b) further provides that actual physical loss from income producing trees includes the cost of reestablishing the trees; such loss from trees grown for timber is based on the value of the trees at the time of the disaster less their salvage value, and such loss to growing crops or pasture is the cost of reestablishing the crops or pasture. After replacing such perennials after a disaster, the borrower may incur additional costs for several years until the perennials are able to produce agricultural commodities. Therefore, the proposed rule clearly states that the proceeds of physical loss loans for chattels may be used to pay costs necessary to restore perennials which were damaged by the disaster and that produce agricultural commodities.

The proposed rule will modify the requirements regarding security for Emergency loans. Section 802 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999, amended section 324(d) of the Act to prohibit FSA from rejecting an Emergency loan applicant because the applicant failed to pledge a particular amount of collateral, if FSA is reasonably certain the applicant can repay the loan. However, section 324(d) also allows FSA to require the applicant to pledge available collateral as security for the loan.

Therefore, the proposed rule will eliminate the requirement that an Emergency loan must be secured by a particular amount of collateral. The proposed rule will require the applicant to demonstrate an ability to repay the loan on an on-going operational basis, excluding special one-time sources of income or expenses. Because the ability to repay is a method for determining whether the loan will be repaid, the

proposed rule has tightened the requirements concerning the farm plan supporting the loan application. This determination will be based on a farm plan which must indicate the loan will be repaid based upon the applicant's production and income history. The plan must also indicate how pricing risks will be addressed through the use of marketing contracts, hedging, options, or revenue insurance and include a marketing plan or similar risk management practice. Further, the applicant must demonstrate that it has had positive net cash income in at least 1 of the immediately preceding 5 years. The proposed rule also will provide that if the applicant is using the applicant's ability to repay the loan as security, FSA shall require that the applicant pledge all available assets (including personal assets for both individuals and members of entities).

The proposed rule will include changes regarding the insurance requirements to protect FSA's interests in loan security. The proposed rule will retain the current requirement that a borrower must obtain at least catastrophic risk protection of crop insurance or waive future emergency crop loss assistance for each crop that is a basic part of an applicant's total farming operation, if available, in writing. However, the proposed rule will add an exception that a borrower must obtain crop insurance on all growing crops used to provide adequate security, if available as determined by the Agency. This additional insurance requirement is being imposed to provide further protection for FSA with respect to growing crops being used to meet adequate security requirements. For all types of insurance required for an Emergency loan, the proposed rule also requires the borrower to list FSA as loss payee for the insurance indemnity payment or as a beneficiary of a mortgage loss payable clause. This change will ensure that FSA is able to obtain the portion of such insurance proceeds that represented security for the loan if an insurance indemnity is paid. The proposed rule will require that in the case of crop insurance, the borrower must execute an assignment of indemnity in favor of FSA. Such an assignment will also ensure that FSA will be able to collect the portion of such indemnity payments in which it has an interest.

The proposed rule also will eliminate the limitations on the amount given to the applicant at loan closing for essential family household expenses. Instead of limiting the amount the borrower may use for this purpose to a set amount, the proposed rule will allow

FSA to be more flexible in determining the amount needed by the individual applicant for essential family household expenses during the farm plan period. Under this change, the farm plan will need to indicate that part of the loan proceeds will be used for essential family household expenses.

The proposed rule will provide more flexibility in the requirements regarding an applicant whose operation changed between the time that the disaster took place and the time the loan application is submitted. Under the current rule, the changed farming operation cannot be larger than the farming operation that existed at the time of the disaster. The proposed rule will allow a farming operation to increase in size, however, the loan amount will reflect the percentage of the former farming operation in the new operation and in no case can the loan amount exceed the amount the former operation would have been eligible to receive. To further simplify this process, the proposed rule also will remove the formula for adjusting the loan amount for the new farming operation based on the changes in ownership from the former farming operation.

The proposed rule will retain two eligibility requirements from the previous regulation regarding managerial ability and honest endeavor. Prior to amendments made to the Act by the Department of Agriculture Reorganization Act of 1994 (1994 Act) (Pub. L. 103-354), these requirements were statutory eligibility requirements. Even though these statutory requirements were eliminated by section 227 of the 1994 Act, FSA has retained them administratively as requirements of the Emergency loan program. The basis for retaining these provisions stems from the determination that these requirements give FSA critical information in determining whether an applicant will be able to repay the loan and meet all other conditions of the loan. Managerial ability of the applicant is a critical element in determining whether the applicant will be able to successfully manage the operation to generate sufficient revenue to repay the loan. The requirement of honestly endeavoring to carry out the conditions of the loan is a critical element in determining whether an applicant will repay the loan and meet all other loan conditions. The requirement assures that applicants will completely and truthfully represent their farming operation for the purpose of determining loan eligibility. The requirement also assures that the borrower will operate the farming operation in a manner consistent with

Emergency loan purposes and will not unnecessarily jeopardize FSA's security interests. With respect to this requirement, the proposed rule will provide FSA with the authority to consider whether the applicant has properly fulfilled its obligations with other parties including other Federal Agencies in good faith. This provision is not intended to address situations beyond the applicant's control or isolated and inadvertent mistakes made by the applicant. FSA believes that an examination of such information will give it more critical information about the applicant to determine whether the applicant will operate the farming operation in a manner consistent with the requirements of the loan.

FSA also proposes to add the eligibility requirement that an applicant's property must not be subject to a Federal judgement lien. This amendment is required by Federal debt collection procedure, 28 U.S.C. 3201(e). Until such judgment is paid in full or otherwise satisfied, the debtor is not eligible for any Federal loan or grant assistance under this provision.

The proposed rule also will amend the Emergency loan regulations to reflect the consolidation of the Farm Loan Program portions of the former Farmers Home Administration with the Agricultural Stabilization and Conservation Service into FSA pursuant to the Department of Agriculture Reorganization Act of 1994. FSA further will amend the current regulation to add, for clarity, definitions of the following terms: "Act," "agricultural commodity," "allowable costs," "applicant," "chattel," "chattel or real estate essential to the farming operation," "debt forgiveness," "disaster," "disaster area," "disaster yield," "essential family household expenses," "entity," "Farm Loan Program loan," "farmer," "livestock," "non-essential assets," "normal production yield," "owner," "physical losses," "security value," and "trust."

In addition to these changes, the proposed rule generally will eliminate provisions in the current regulations that address certain administrative functions of FSA, the details of which do not directly affect loan making decisions or administrative burdens of the applicant.

#### List of Subjects in 7 CFR Part 1945

Agriculture, Credit, Disaster assistance, Loan programs—Agriculture.

Accordingly, 7 CFR part 1945 is proposed to be amended as follows:

#### PART 1945—EMERGENCY

1. The authority citation for part 1945 continues to read as follows.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1980.

2. Add subpart B to read as follows:

##### Subpart B—Emergency Loans

Sec.

- 1945.51 Purpose.
- 1945.52 Definitions.
- 1945.53 Emergency loan funds uses.
- 1945.54 Eligibility requirements.
- 1945.55 Limitations.
- 1945.56 Interest rate.
- 1945.57 Loan terms.
- 1945.58 Repayment and Security requirements.
- 1945.59 Appraisal and valuation requirements.
- 1945.60 Insurance for loan security.
- 1945.61 Charges and fees.

##### Subpart B—Emergency Loans

###### § 1945.51 Purpose.

The purpose of the Emergency Loan Program is to provide financial assistance to family farmers that have suffered losses as the result of a disaster so that they can return to normal farming operations as soon as possible after the disaster. Specifically, this subpart describes the policies and procedures of the Agency for making Emergency loans to operators of such farms.

###### § 1945.52 Definitions.

*Act* means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

*Additional security* means any real estate or chattel that provides security in excess of the amount of security value equal to the loan amount, excluding security described in § 1945.58(g).

*Adequate security* means any real estate and chattel that is required to provide a security value at least equal to the loan amount.

*Agency* means the Farm Service Agency, including its employees, State and area committee members, and any successor agency.

*Agricultural commodity* means livestock, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other agricultural commodities as determined by the Agency.

*Allowable costs* means those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.

*Applicant* means an individual or entity (including each owner of the entity unless the context requires otherwise) operating a farming operation at the time of the disaster, who is requesting assistance from the Agency under this subpart. All requirements of applicants apply to owners of the entity individually and collectively unless the context clearly requires otherwise.

*Aquacultural species* means aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment which the applicant has exclusive rights to use.

*Basic part of an applicant's total farming operation* means an agricultural commodity production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

*Borrower* means an individual or entity which has an outstanding obligation to the Agency under any Farm Loan Program loan, without regard to whether the loan has been accelerated. A borrower includes all parties liable for such obligation owed to the Agency, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed; or who have been discharged of all such obligations owed to the Agency.

*Chattel* means any property that is not real estate.

*Chattel or real estate essential to the farming operation* means chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

*Corporation* means a private domestic entity recognized as a corporation and authorized as a corporation under the laws of the State or States in which the entity does business.

*County* means a local administrative subdivision of a State or similar political subdivision of the United States.

*Debt forgiveness* means reducing or terminating a debt under the Act in a manner that results in a loss to the Agency (excluding a consolidation, rescheduling, reamortization, or deferral), through:

- (1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;
- (2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or

(3) Paying a loss pursuant to 7 U.S.C. 2005 on a Farm Loan Program loan guaranteed by the Agency.

*Disaster* means an event of unusual and adverse weather conditions or other natural phenomena that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area pursuant to subpart A of this part.

*Disaster area* means the county(ies), declared/designated as a disaster area for Emergency loan assistance as a result of disaster related losses. This includes counties named as contiguous to those counties declared/designated as disaster areas.

*Disaster yield* means the per acre yield of an agricultural commodity on the farming operation during the production period when the disaster occurred.

*Essential family household expenses* means the expenses associated with providing food, clothing, and shelter necessary to maintain the borrower and the immediate family of the borrower.

*Established farmer* means a farmer who is an operator of the farming operation (in the case of a farming operation operated by an entity, its owners as a group) who:

(1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;

(2) Spends a substantial portion of time in carrying out the farming operation;

(3) Planted the crop, or purchased or produced the livestock on the farming operation;

(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the farming operation's projected cash flow for the next crop year or the next 12 month period, as mutually determined; and

(5) Is not:

(i) A corporation with a majority interest held by one or more estates, trusts, other corporations, partnerships, or joint operations;

(ii) A partnership or joint operation with a majority interest held by an estate, trust, corporation, another partnership or another joint operation; or

(iii) An integrated livestock, poultry, or fish processor who operates primarily

and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the operation is not managed by an outside full-time manager or management service and such loans shall be based on the applicant's share of the agricultural production as set forth in the contract.

*Entity* means a partnership, corporation, cooperative or joint operation that is an operator of an operation engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.

*Family farm* means family farm as defined in § 1941.4 of this chapter.

*Farm Loan Program loan* means a Farm Ownership loan, Operating loan, Emergency loan, Soil and Water loan, or Economic Emergency loan made or guaranteed by the Agency pursuant to the Act.

*Farmer* means individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

*Feasible plan* means feasible plan as defined in § 1943.4.

*Household contents* means the essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, clothes, etc. The term excludes all luxury items including jewelry, furs, antiques, paintings, etc.

*Hazard insurance* means coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builders risk, public liability, property damage, flood or mudslide, workman's compensation, or any similar insurance that is available and needed to protect the security, or which is required by law.

*Livestock* means a member of the animal kingdom, or product thereof, as determined by the Agency.

*Majority interest* means an ownership interest of 50 percent or more of the entity.

*Non-essential asset* means non-essential asset as defined in § 1951.906 of this chapter.

*Nonfarm enterprise* means nonfarm enterprise as defined in § 1941.4 of this chapter.

*Normal production yield means:*

(1) The per acre actual production history of the crops produced by the farming operation determined pursuant to the Federal Crop Insurance Act (7

U.S.C. 1501 *et seq.*) and part 400, subpart G of this title for the production year during which the disaster occurred;

(2) When the actual production history is not available and the operator has been a Farm Loan Program borrower with respect to that farming operation for the 3 years prior to the year of the disaster the prior 3 year average per acre yield for the crops will be determined using the Agency Farm Loan Program production records for the farming operation when such records are available and the disaster yield for the years when such records are not available; or

(3) When the actual production history for the farming operation is not available and the operator has not been a Farm Loan Program borrower for the prior 3 years, the per acre average of the county average production for the crops for the 3 years prior to the production year during which the disaster occurred.

*Owner* means those persons with an interest in the entity as a stockholder, partner, member, or joint operator.

*Physical loss* means damage or destruction with respect to real estate or chattel, excluding annual growing crops.

*Production loss* means damage or destruction with respect to annual growing crops.

*Security value* means the value of real estate or chattels (less the value of any prior liens) used as security for a loan under this subpart as of the date of the closing of the loan.

*Trust* means an organization that under applicable State law meets the criteria of being a trust of any kind, but excluding trusts that under applicable State law also meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

*United States* means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Working capital* means cash available to conduct normal daily farming or ranching operations including but not limited to feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent.

#### **§ 1945.53 Emergency loan funds uses.**

(a) *Physical losses.*

(1) *Real estate losses.* Emergency loans may be used to address the needs of the farming operation associated with physical losses of real estate that were the result of a disaster to:

(i) Acquire or enlarge the farm, as specified in § 1943.16(a) of this chapter,

as long such acquisition or enlargement does not cause the farm to exceed the requirements for a family farm;

(ii) Make capital improvements to the family farm, as specified in § 1943.16(b) of this chapter;

(iii) Pay for activities to promote soil and water conservation and protection on the family farm as specified in § 1943.16(c) of this chapter;

(iv) Pay loan closing costs related to acquiring, enlarging, or improving the family farm as specified in § 1943.16(d) of this chapter that an applicant cannot pay from other sources;

(v) Replace land or water resources on the family farm which resources cannot be restored;

(vi) Pay costs associated with land and water development for conservation or use purposes;

(vii) Establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(viii) Replace land from the family farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* Emergency loans may be used to address the needs of the farming operation associated with the physical losses of chattel that were the result of a disaster to:

(i) Purchase livestock and farm equipment, including but not limited to quotas, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining, planning, and closing a loan that an applicant cannot pay from other sources (e.g. fees for legal, architectural, and other technical services, but not fees for agricultural management consultation and preparation of Agency forms);

(iii) Repair or replace essential household contents damaged in the disaster;

(iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) In the case of a farming operation that has suffered livestock losses, pay essential family household expenses; and

(vi) Refinance a loan (in the case of a Farm Loan Program loan debt as long as the applicant has not refinanced the loan more than 4 times).

(b) *Production losses.* Emergency loans may be used to address the losses of the farming operation associated with production of agricultural commodities (except the losses associated with the loss of livestock) of the farming

operation that were the result of a disaster to:

(1) Pay costs associated with reorganizing the family farm to improve its profitability;

(2) Pay annual operating expenses, which includes, but is not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent;

(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance with the standards will cause substantial economic injury;

(4) Pay training costs required or recommended by the Agency;

(5) Pay essential family household expenses;

(6) Refinance a debt (in the case Farm Loan Program loan debt as long as the applicant has not refinanced the loan more than 4 times); and

(7) Replace lost working capital.

#### **§ 1945.54 Eligibility requirements.**

(a) *General borrower eligibility requirements.* To be eligible for an Emergency loan:

(1) *Legal capacity.* An applicant must have the legal capacity to incur the obligation of the loan.

(2) *Citizenship.*

(i) *Applicant that is an individual.* The individual applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence as determined by the U.S. Immigration and Naturalization Service.

(ii) *Applicant that is an entity.* If the applicant is an entity, the majority interest of the applicant must be held by individuals who are citizens of the United States or aliens lawfully admitted to the United States for permanent residence, as determined by the U.S. Immigration and Naturalization Service.

(3) *Family farm and nonfarm enterprise.* The applicant's farming operation must qualify as a family farm and must not be a nonfarm enterprise.

(4) *Established farmer.* An applicant must be an established farmer.

(5) *Owner and operator requirements.*

(i) *Loans for physical losses to real estate.* In the case of a loan for a purpose specified in § 1945.53(a)(1), an applicant must be:

(A) the owner and operator of the farming operation; or

(B) an operator of the farming operation whose lease on the affected real estate would exceed the term of the loan and give the Agency prior notification of the termination of the

lease during the term of the loan, and whose lessor would give the Agency a mortgage on the real estate as security for the loan.

(ii) *Loans for physical losses to chattel.* In the case of a loan for a purpose specified in § 1945.53(a)(2), an applicant must be the operator of the farming operation.

(iii) *Loans for production losses.* In the case of a loan for a purpose specified in § 1945.53(b), an applicant must be the operator of the farming operation.

(6) For entity applicants:

(i) If the owners holding a majority interest in the entity applicant are related by blood or marriage, at least one of such related owners must operate the family farm.

(ii) If the owners holding a majority interest in the entity applicant are not related by blood or marriage, the majority interest holders must all operate the family farm.

(iii) If the entity applicant has an operator interest in any other farming operation, that farming operation must not be larger than a family farm.

(7) *Intent to continue farming.* An applicant must demonstrate the intent to continue the farm operation after the disaster.

(8) *Credit history.* The applicant must demonstrate a credit history satisfactory to the Agency. The Agency may use credit reports or any other available information to make this determination.

(9) *Availability of credit elsewhere.* An applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the declination as follows:

(i) In the case of a loan in excess of \$300,000 and the net worth of the applicant is \$1,000,000 or greater, three written declinations of credit, one of which is from a lender outside the normal trade area of the applicant, are required;

(ii) In the case of a loan in excess of \$300,000 and the net worth of the applicant is less than \$1,000,000, two written declinations of credit are required;

(iii) In the case of a loan of \$300,000 or less, one written declination of credit is required; and

(iv) In the case of a loan of \$100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit

elsewhere, and based on the applicant's circumstances credit it not likely to be available.

(10) *Prior debt forgiveness.* An applicant must not have received debt forgiveness from the Agency on more than one occasion before April 4, 1996, or any time on or after April 4, 1996.

(11) *Federal judgement lien.* An applicant's property must not be subject to a Federal judgement lien.

(12) *Managerial ability.* An applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by education, on-the-job training, or farming experience within the last 5 years that covers an entire production cycle.

(13) *Borrower training.* The applicant must agree to meet the borrower training requirements in accordance with § 1924.74 of this chapter.

(14) *Prior drug convictions.* An applicant cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined in part 1308 of title 21 during the current crop year or the previous 4 crop years.

(15) *Honestly endeavor.* The applicant must demonstrate to the Agency that the applicant will honestly endeavor to carry out the conditions of the loan. The Agency will determine whether the applicant will make a sincere effort to repay the loan, devote the effort required to carry out the terms and conditions of the loan, and deal with the Agency in good faith. This includes the applicant providing current, complete, and truthful information when applying for assistance. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(b) *Additional Emergency loan eligibility requirements.*

(1) *Timely loan application.* A loan application must be received by the Agency not later than 8 months after the date the disaster is declared or designated in the county of the applicant's farming operation.

(2) *Qualifying losses.*

(i) *Loss must occur in a disaster area.* An applicant may seek an Emergency loan only with respect to a family farm that had production or physical losses as a result of a disaster in a disaster area.

(ii) *Eligible production loss.* For production loss loans, an applicant must have a disaster yield that is at least 30 percent below the normal production

yield of the crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.

(iii) *Eligible physical loss.* For physical loss loans, an applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household items that must be repaired or replaced.

(3) *Changes in ownership structure.* The ownership structure of a family farm may change between the time of a qualifying loss and the time an Emergency loan is closed. In such case, all of the following requirements must be met:

(i) The applicant, in its new form, including all owners must meet all applicable eligibility requirements contained in this section;

(ii) The new individual applicant, or all owners of a new entity applicant must have had an ownership interest in the farming operation at the time of the disaster; and

(iii) The amount of the loan will be based on the percentage of the former farming operation transferred to the new applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

(4) *Requirement of insurance.* Emergency loan funds may not be used for physical loss purposes (excluding losses to livestock) unless that physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage (the lesser of the property's tax or cost depreciated value) was greater than the cost of the insurance.

#### § 1945.55 Limitations.

(a) *General limitations.*

(1) *Highly erodible soil and wetlands conservation.* The Agency will not make a loan under this subpart for any purpose that contributes to erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity.

(2) *Construction.* Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards.

(b) *Restriction on loan amount.* An Emergency loan may not exceed the lesser of:

(1) The amount of credit necessary to restore the family farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant calculated pursuant to paragraph (d) of this section.

(c) *Maximum cumulative loan principal.* The maximum cumulative Emergency loan principal that any individual, entity, or owner of an entity may have outstanding is \$500,000.

(d) *Production losses.* The applicant's actual production loss with respect to a crop is calculated as follows:

(1) Subtract the applicant's disaster yield from the applicant's normal production yield to determine the applicant's per acre production loss;

(2) Multiply the applicant's per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the applicant's production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation received by the applicant for the production loss.

(e) *Physical loss.*

(1) *Amount of loss.* The applicant's total eligible physical losses is calculated as follows:

(i) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(ii) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(iii) Add the value of replacement livestock (such valuation will be based on a national or regional valuation of species or product classification whichever the Agency determines is more accurate);

(iv) Add the allowable costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Add, in the case of an applicant that is an individual, the allowable costs associated with repairing or replacing essential household contents, not to exceed \$20,000; and

(vi) Subtract any other disaster related compensation or insurance indemnities received by the applicant for the loss or damage to the chattel or real estate.



(2) *Documentation.* In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

#### **§ 1945.56 Interest rate.**

The interest rate applicable for an Emergency loan will be the lower of the interest rate at the time of either loan approval or loan closing and in no event shall exceed 8 percent annually.

#### **§ 1945.57 Loan terms.**

(a) *Basis for repayment.* The Agency schedules repayment of Emergency loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.

(b) *Minimum payment requirement.* The repayment schedule must include at least one payment every year.

(c) *Repayment of loans for annual operating expenses.* Emergency loans for annual operating expenses must be repaid within 12 months, except the Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities of the farming operation.

(d) *Repayment of loans for production or physical losses to chattel.* The repayment schedule for loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between 1 and 7 years) may not exceed 7 years. If necessary to improve the repayment ability of the loan and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years.

(e) *Repayment of loans for physical losses to real estate.* The repayment schedule for loans for physical losses to real estate is based on repayment ability of the applicant and the useful life of the security, but in no case will the term of repayment exceed 40 years.

#### **§ 1945.58 Repayment and security requirements.**

##### *(a) General requirements*

(1) *Ability to repay.* The applicant must submit a feasible plan that demonstrates the applicant's ability to repay the loan. The plan must demonstrate that the applicant will meet all other credit needs.

(2) *Sufficient equity.* An applicant must have sufficient equity in the security pledged for an Emergency loan to provide adequate security for the loan except as permitted in paragraph (h) of this section. The applicant must provide additional security, if available, not to exceed 150 percent of the loan amount.

(3) *Interests in property not owned by the applicant.* Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan and will be considered in determining whether adequate security is available.

(b) *Real estate loans.* In the case of an Emergency loan for real estate purposes, the loan shall be secured at a minimum by the real estate that is being purchased, repaired, replaced, refinanced, or improved with the loan funds.

(c) *Chattel and production loans.* In the case of an Emergency loan for chattel purposes (including production purposes), the loan shall be secured, at a minimum, by the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

##### *(d) Agency lien position*

(1) *Real estate security.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available, on the real estate. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(i) The prior lien does not contain any provision that may jeopardize the Agency's interest or the applicant's ability to repay the loan to the Agency;

(ii) Prior lienholders agree to notify the Agency of acceleration and foreclosure whenever State law or other arrangements do not require such notice; and

(iii) The applicant must agree to obtain permission from the Agency prior to granting any additional security interests in the real estate.

(2) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(i) An applicant must provide a security interest in the real estate;

(ii) An applicant and the purchase contract holder must agree in writing that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate;

(iii) An applicant must refinance the existing purchase contract, or demonstrate that financing is not available, if an acceptable contract of sale cannot be negotiated or the purchase contract holder refuses to agree to apply all the insurance proceeds to repair or replace the damaged real estate and wants to retain some of the proceeds as an extra payment on the balance owed;

(iv) The purchase contract must not be subject to summary cancellation on default and must not contain any provisions that are contrary to the Agency's best interests; and

(v) The contract holder must agree in writing to notify the Agency of any breach by the purchaser, and give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(3) *Chattel security.* If chattel property is pledged as security for a loan the Agency must obtain a first lien on the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

(e) *Same security for multiple loans.* The same property may be pledged as security for more than one Farm Loan Program loan.

(f) *Lack of adequate security.* When adequate security is not available because of the disaster, the loan application may be approved if the Agency determines based on the plan required in paragraph (a)(1) of this section there is a reasonable assurance that the applicant has the ability to repay the loan (based on an on-going operational basis, excluding special one-time sources of income or expenses) provided:

(1) The applicant has pledged as collateral for the loan, all available personal and business collateral, except those items listed in paragraphs (h)(1) and (h)(2) of this section;

(2) The farm plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, or options and includes a marketing plan or similar risk management practice; and

(3) The applicant has had positive net cash farm income in at least 1 of the past 5 years.

##### *(g) Conditions for taking other assets as security.*

(1) *Conditions.* In addition to the requirements for adequate and additional security, the Agency will take a security interest in other assets (other than assets listed under the exceptions in paragraph (h) of this section), if available, when:

(i) An applicant has non-essential assets that are not being converted to cash to reduce the loan amount; or

(ii) The real estate security and chattel security do not provide adequate security for the loan.

(2) *List of other assets.* Other assets may include:



(i) A pledge of real estate or chattel by a third party;

(ii) Patents, copyrights, life insurance, stocks, other securities, and membership in cooperatives, owned by the applicant;

(iii) Assets owned by an applicant that cannot be converted to cash without jeopardizing the farm operation; and

(iv) Non-essential assets owned by the applicant with an aggregate value in excess of \$5,000.

(h) *Exceptions to security requirements.* The Agency will not take a security interest in certain property in the following situations:

(1) The property proposed as security has environmental contamination, restrictions, or historical impact that could impair the value or expose the Agency to potential liability;

(2) The Agency cannot obtain a valid lien on the security;

(3) An applicant's personal residence and appurtenances are on a parcel of land separate and apart from that real estate being used as adequate security for the loan; or

(4) An applicant's other assets are used for farming or for essential living expenses and are not needed for security purposes and may include but not limited to subsistence livestock, cash or special cash collateral accounts, retirement accounts, personal vehicles, household goods, and small tools and equipment such as hand tools, power lawn mowers.

(i) *Requirements for security.*

(1) For loans over \$25,000, title clearance is required when real estate is taken as security.

(2) For loans of \$25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the loan approving official is uncertain of the record owner or debts against the real estate security, a title search is required.

#### **§ 1945.59 Appraisal and valuation requirements.**

(a) *Establishing value for real estate.* Real estate appraisals conducted pursuant to this subpart may be completed by designated appraisers or contract appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice guidelines and standards in accordance with part 761 of this title.

(b) *Establishing value for agricultural commodities and equipment.* When the

Agency obtains valuations of agricultural commodities and equipment, such valuations shall be as follows:

(1) The security value of the annual agricultural commodities production (excluding livestock) is presumed to be 100 percent of the amount loaned for annual operating and essential family household expenses; and

(2) The value of livestock and equipment will be market value as determined by the Agency.

(c) *Assets damaged by the disaster.* In the case of farm assets damaged by the disaster, the value of such security shall be established immediately before the disaster occurred.

#### **§ 1945.60 Insurance for loan security.**

(a) *Adequacy of insurance.* An applicant must obtain insurance, consistent with this section, equal to the lesser of the value, of the security at the time of the closing of the loan, or the principal of the loan.

(b) *Hazard insurance.* All security (except growing crops) must be covered by hazard insurance.

(c) *Flood or mudslide insurance.* Real estate security located in flood or mudslide prone areas, as determined by the Agency, must be covered by flood or mudslide insurance.

(d) *Crop insurance.*

(1) *Requirement to obtain crop insurance.* Except as provided in paragraph (d)(2) of this section, prior to the closing of the loan under this subpart, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for the crop during the crop year for which the loan is sought for each crop which is a basic part of an applicant's total farming operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop.

(2) *Exception.* Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available.

(e) *Indemnities.* A borrower must:

(1) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(2) In the case of crop insurance, execute an assignment of indemnity in favor of the Agency.

#### **§ 1945.61 Charges and fees.**

The applicant must pay all filing, recording, notary, and lien search fees necessary to process and close a loan. The applicant may pay or be reimbursed for these fees from Emergency loan funds.

#### **Subpart D—[Removed]**

4. Subpart D is removed.

Signed at Washington, DC, on August 30, 2000.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

[FR Doc. 00-23226 Filed 9-11-00; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

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

[Docket No. 99-CE-40-AD]

RIN 2120-AA64

#### **Airworthiness Directives; British Aerospace Jetstream Models 3101 and 3201 Airplanes**

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

**ACTION:** Proposed rule; Withdrawal.

**SUMMARY:** This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all British Aerospace Jetstream Models 3101 and 3201 airplanes. The proposed AD would have required you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD was the result of reports of in-flight incidents and an accident (on airplanes other than the referenced British Aerospace airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. British Aerospace has shown the design of the affected airplanes, including the language currently in the AFM, is adequate to address the conditions identified in the proposed AD for these airplanes. Therefore, AD action is not necessary to address the conditions on these airplanes and we are withdrawing the NPRM.

**ADDRESSES:** You may look at information related to this action at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-40-AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry E. Werth, Airworthiness Directive Coordinator, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: