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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951

RIN 0560-AE61

Enforcement and Collection of Shared Appreciation Agreements

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its direct Farm Loan Programs loan servicing regulations to clarify the requirements for collecting on a Shared Appreciation Agreement (SAA). The intended effect is to reduce losses to the Government caused by litigation expenses and delays in account collection.

EFFECTIVE DATE: March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Senior Loan Officer, Farm Loan Programs Loan Servicing Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0523, 1400 Independence Ave., SW, Washington, D.C. 20250-0523; Telephone: 202-720-1649; Facsimile: 202-690-0949; E-mail: klaris@usda.fsa.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined not significant for the purposes of E.O. 12866 and has not been reviewed by OMB.

Executive Order 12372

1. For the reasons contained in the final rule related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to and has met the provisions of E.O. 12372 in accordance with FmHA Instruction 1940-J.

Federal Assistance Program

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

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agencies have determined that this action does not significantly 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 final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) 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.

Paperwork Reduction Act of 1995

This final rule does not impose any new information or record keeping requirements on the public that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

Regulatory Flexibility Act

The issuing agencies certify that this rule will not have a significant economic impact on a substantial

number of small entities as defined in the Regulatory Flexibility Act, Public Law 96-534, as amended (5 U.S.C. 601). This rule will not increase or decrease the action required by small business entities. Amendments included in this rule also will not impact small entities to a greater extent than large entities or individual farm borrowers.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector of \$100 million or more in any 1 year. When such statement is needed for a rule, section 205 of the UMRA, FSA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of 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 the UMRA.

National Performance Review

This rule has been reviewed in accordance with the National Performance Review.

Discussion of Final Rule

These changes involve the Farm Loan Programs (FLP) loans of FSA formerly administered by the Farmers Home Administration (FmHA) as Farmer Programs loans.

This rule amends 7 CFR part 1951 subpart S which was published in its entirety as an interim rule with a request for comments (53 FR 35638-35798, September 14, 1988) to implement the requirements of the Agricultural Credit Act of 1987. A second interim rule with a request for

comments (57 FR 18612, April 30, 1992) was published to implement amendments made by the Food, Agriculture, Conservation, and Trade Act of 1990. This rule is being published in response to comments received on these interim rules and to make minor clarifications. In addition, the Office of Management and Budget control number assigned for the approval of information collections is being revised to reflect the transfer of the public reporting burden from the Farmers Home Administration to the Farm Service Agency in accordance with the provisions of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354).

As a condition to, and in consideration of, having a portion of their debt written down and their loans restructured, a borrower must execute an SAA. FSA collects a portion of the written off debt from appreciation of the real estate security when the property is sold, the loans are paid or the farmer quits farming. Current regulations are written so as to allow collection on an SAA only after transfer of title. The present wording has resulted in the interpretation that property must be foreclosed upon in order to effect a change in title before SAA can be enforced. This requires filing an additional civil action after foreclosure to collect proceeds that result from value appreciation of the security. This results in decreased collections on SAA's and increased litigation costs. This rule clarifies that acceleration of the loan triggers acceleration of the SAA.

Comments were received from a State commissioner of agriculture, a State rural action organization, a legal services organization, and the National Family Farm Coalition. Two commenters recommended that FSA clarify that a borrower may pay the amount due under an SAA in installments and that the debt arising out of this agreement may be serviced as an Agency loan. This recommendation has been adopted in this rule. Another commenter suggested that the regulation address how shared appreciation is to be handled when there is only a partial sale of the real estate securing the SAA. This recommendation has also been adopted and the necessary changes are made by this rule. A commenter also recommended that the SAA contain the amounts of appreciation to be recaptured and the actions that trigger the agreement. This recommendation has also been adopted. Another commenter recommended that the Agency requirement that real estate

records be reviewed biannually be revised to require that records be reviewed after expiration of the agreement. This suggestion was adopted. The requirement that records be reviewed after expiration of the agreement is not included in the final rule since it is an internal Agency policy directive.

Additionally, FSA is proposing to remove administrative processes from the regulations leaving only regulatory actions which impact the public. Also, some paragraphs are reorganized and wording changes are made to make the regulation more concise and easier to read and understand. FSA is developing a separate handbook to address internal operating procedures. This handbook will not be published in the **Federal Register**, but will be available to the public upon request.

For example, in this rule, FSA is removing the specific references to Exhibit D, "Shared Appreciation Agreement," which is being made into Form FSA 1951-64. FSA will continue to use these types of specialized forms. However, since these matters involve internal operating procedures, the form will be contained in FSA's internal instructions only, with the regulation referencing only that a form will be executed. Other clarifications are made on how to execute, service and collect Shared Appreciation Agreements. This change will clarify that acceleration of the loan triggers acceleration of the SAA.

List of Subjects in 7 CFR Part 1951

Account servicing, Debt restructuring, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing loans—servicing.

For the reasons stated in the preamble, the Farm Service Agency amends 7 CFR, part 1951 as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart S—Farm Loan Programs Account Servicing Policies

2. Section 1951.901 is amended by adding a new sentence after the second sentence to read as follows:

§ 1951.901 Purpose.

* * * Shared Appreciation Loans (SA) may be reamortized under this subpart if the borrower also has

outstanding Farm Loan Programs loans. * * *

3. Section 1951.909 is amended by revising paragraphs (e)(2)(viii), (e)(2)(vii) introductory text, and (e)(2)(viii)(A), (h)(3)(viii), and (j) to read as follows and by removing paragraphs (k), (l), and (m):

§ 1951.909 Processing primary loan service programs requests.

(e) * * *

(2) * * *

(vii) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment is extended, the new repayment period plus the period the loan has been in effect may not exceed the maximum number of years for that type of loan as set forth below, or the useful life of the security, whichever is less:

(A) FO, SW, RL, EE, and EM loans may not exceed 40 years from the date of the original note or assumption agreement.

(B) EE loans for real estate purposes, which are secured by chattels only, may be reamortized over a period not to exceed 20 years from the date of the original note or assumption agreement.

(C) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(D) SA loans may not exceed 25 years from the date of the original amortized note.

(viii) The interest rate will be as follows:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the original Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less. SA loans will be reamortized at the current nonprogram interest rate in effect on the date of reamortization or the nonprogram interest rate on the original amortized note, whichever is less.

* * * * *

(h) * * *

(3) * * *

(viii) Upon payment by the borrower of current market value buyout, the security instruments will be released for the Farm Loan Programs loans bought out.

* * * * *

(j) *Processing of writedown.* The DALRS computer program will be used to determine the notes and amount to be written down. The borrower's account

will be credited for the amount written down and the loans remaining after writedown will be rescheduled or reamortized.

(1) A separate note will be signed for each loan being reamortized.

(2) If any loan written down was secured by real estate, the borrower must enter into a "Shared Appreciation Agreement." This agreement provides for FSA to collect back all or part of the amount written down by taking a share in any positive appreciation in the value of the real property securing the SAA and the remaining debt after the writedown. The maximum amount of shared appreciation collected will not exceed the amount written down. If a borrower's FLP loan was not secured by real estate, the borrower will not be required to enter into a shared appreciation agreement.

(3) A lien will be taken on assets in accordance with § 1951.910. The Agency's real estate liens will be maintained even if the writedown of the borrower's debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be subordinated to increase the amount of the prior liens during the shared appreciation period.

4. Section 1951.914 is amended to read as follows:

§ 1951.914 Servicing Shared Appreciation Agreements.

(a) [Reserved]

(b) *When shared appreciation is due.* Shared appreciation is due at the end of the term of the Shared Appreciation Agreement, or sooner, if one of the following events occurs:

(1) The sale or conveyance of any or all the real estate security, including gift, contract for sale, purchase agreement, or foreclosure. Transfer to the spouse of the borrower in case of the death of the borrower will not be treated as a conveyance; until the spouse further conveys the property;

(2) Repayment of the loans; or the loans are otherwise satisfied;

(3) The borrower or surviving spouse ceases farming operations or no longer receives farm income, including lease income; or

(4) The notes are accelerated.

(c) *Determining the amount of shared appreciation due.* (1) The current market value of the real estate property will be determined based on a current appraisal. If only a portion of the real estate is sold, an appraisal will only be done on the real estate being considered for release. For these cases, an appraisal may be required to determine the market value of the property at the time the SAA was signed if such value

cannot be obtained through another method.

(2) [Reserved]

(3) Shared appreciation will be due if there is a positive difference between the market value of the security property at the time of calculation and the market value of the security property as of the date of the SAA. The maximum appreciation requested will not be more than the total amount written down. The amount of shared appreciation will be:

(i) 75% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occur within 4 years or less from the date of the SAA; or

(ii) 50% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occurs more than 4 years from the date of the SAA, or if the term of the SAA expires.

(4) [Reserved]

(5) When the full amount of the appreciation due under this section and any remaining FSA debt is paid in full and credited to the account, the borrower will be released from liability.

(6) Shared appreciation that will become due will be included in the amount owed to FSA, such as with any debt settlement. Nonamortized shared appreciation may be assumed and amortized on program or nonprogram terms based on the transferee's eligibility as contained in subpart A of part 1965 of this chapter.

(d) [Reserved]

(e) *Shared appreciation amortization.* Shared appreciation may be amortized to a nonprogram loan for borrowers who will continue with FSA on program loans. Shared appreciation will not be amortized if the amount is due because of acceleration, payment in full or satisfaction of the debt, or the borrower ceases farming. The amount due may be amortized as an SA loan under the following conditions:

(1) The borrower must have a feasible plan as defined in § 1951.906 including the SA loan payment.

(2) The borrower must be unable to pay the shared appreciation, or obtain the funds elsewhere to pay the shared appreciation.

(3) [Reserved]

(4) [Reserved]

(5) The loan term will be based on the borrower's repayment ability and the life of the security, not to exceed 25 years.

(6) The interest rate will be the nonprogram real property rate contained in RD Instruction 440.1 (available in any FSA office.)

(7) A lien will be obtained on any remaining FSA security, or if there is no

security remaining, the best lien obtainable on any other real estate or chattel property sufficient to secure the SA note, if available.

(8) The borrower will sign a promissory note for each SA loan established.

(9) If the borrower has outstanding FLP loans, and becomes delinquent or financially distressed as defined in § 1951.906, the SA loan may be considered for reamortization as set forth in § 1951.909(e).

(f) *Priority of collection application.*

Proceeds from the sale of security property will first be applied to any prior lienholder's debt, then to any shared appreciation due, and to the balance of outstanding FLP loans in accordance with subpart A of this part.

(g) *Subordination.* Subordination of FSA's lien on property securing the Shared Appreciation Agreement may be approved and processed in accordance with subpart A of part 1965 of this chapter provided the prior lien debt is not increased.

5. Section 1951.950 is amended to revise the OMB control number "0575-0133" in the first and last sentences to read "0560-0161".

6. Exhibit D is removed and reserved.

Signed in Washington, D.C., on January 26, 1998.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 98-3314 Filed 2-9-98; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-CE-35-AD; Amendment 39-10213; AD 97-24-06]

RIN 2120-AA64

Airworthiness Directives; Glasflugel Models Standard Libelle and Standard Libelle 201 B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Glasflugel Models Standard Libelle and Standard Libelle 201 B sailplanes. This action requires inspecting the aileron operating lever's actuating shaft welded seams for cracks; modifying or replacing the actuating shaft, if cracked; and, if no cracks are found, eventually modifying or