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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 4279

RIN 0570-AA39

Business and Industry Loans; Revisions to Implement 2002 Farm Bill Provisions

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Business-Cooperative Service (RBS) revises its regulations to incorporate provisions outlined in Sections 6013, 6017, and 6019 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 104-424) (2002 Farm Bill). This action is taken to comply with the amendments to sections 310(B) and 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932 and 1983a). The intended effect of this action is to expand eligibility for the Business and Industry Guaranteed Loan Program, provide for a simplified application form for loans of up to \$600,000, and allow the Agency to require specialized appraisals on collateral.

DATES: The effective date of this interim final rule is December 9, 2004. Written or e-mail comments must be received on or before December 9, 2004, to be assured of consideration.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- Agency Web Site: <http://rdinit.usda.gov/regs/>. Follow instructions for submitting comments on the Web Site.

- E-mail: comments@usda.gov. Include the RIN No. 0570-AA39 in the subject line of the message.

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

- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.
- Hand Deliver/Courier: Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Loan Specialist, Business and Industry Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Ave. SW., Washington, DC 20250-3224. Telephone: (202) 720-6802. The TDD number is (800) 877-8339 or (202) 708-9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.768, Business and Industry Loans.

Intergovernmental Review

The Business and Industry loan programs are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental

Review of Department of Agriculture Programs and Activities" in 7 CFR part 3015, subpart V.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0570-0014 and 0570-0017, in accordance with the Paperwork Reduction Act (PRA) of 1995.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), 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. Some provisions published as a part of this rule are, in fact, a benefit to small entities. Eligibility for the cooperative stock purchase program, a program that provides loan guarantees for the purchase of stock in a cooperative by an individual farmer or rancher, has been expanded to include more entities. Additionally, provisions allow the Agency to accept financial statements from farmers and ranchers that are generally accepted by commercial agricultural lenders. Since this rule has no significant economic impact on a substantial number of small entities, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (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 the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this action does not constitute a major Federal action significantly affecting the quality

of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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. Under section 202 of the UMRA, RBS 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 or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS 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.

Executive Order 13132

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

The 2002 Farm Bill contains provisions to be incorporated into existing Business and Industry program regulations. Changes include specifically adding renewable energy systems to eligible loan purposes, allowing the Agency to require specialized appraisals, and using a simplified application for loans of up to \$600,000. The cooperative stock purchase program has also been expanded to allow for guaranteed loans to purchase stock in existing cooperatives, to allow for cooperatives whose members receive cooperative stock purchase loans to contract for services to process agricultural

commodities or otherwise process value-added agricultural products during its first 5 years, and to allow the Agency to accept financial statements from farmers and ranchers that are generally accepted by commercial agricultural lenders. The 2002 Farm Bill also contains provisions (under certain conditions) that allow cooperative organizations to apply for guaranteed loans for the financing of facilities in non-rural areas, for the refinancing of existing B&I loans, and in amounts up to \$40 million.

These revisions are being published as an interim final rule because the changes being made are mandated by sections 6013, 6017, and 6019 of the 2002 Farm Bill and provide limited administrative discretion. This interim final rule will be effective 30 days after publication, and a final rule will be published at a later date addressing any comments received. Section 6020 of the 2002 Farm Bill created a new definition of “rural” and “rural area” for the B&I Guaranteed Loan Program. Part of that new definition precludes loans being made in “* * * a city or town that has a population of greater than 50,000 inhabitants. * * *” Many States have communities that while not legally designated as “towns” under State law are the functional equivalent (*e.g.*, villages or boroughs, or for which there is State law recognition as an incorporated general purpose public entity). RBS believes it is consistent with the intent of the 2002 Farm Bill to include these functionally equivalent localities in the meaning of “town” and proposes to do so in the future. RBS requests public comment on this position.

List of Subjects in 7 CFR Part 4279

Loan programs—Business and industry, Loan Programs—Rural development assistance, Rural areas. ■ Accordingly, chapter XLII, title 7, Code of Federal Regulations, is amended as follows:

CHAPTER XLII—[AMENDED]

PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 continues to read as follows:

Authority: 7 U.S.C. 1989.

Subpart B—Business and Industry Loans

■ 2. Section 4279.108 is amended by revising paragraphs (a) introductory text, (a)(4), and (c); redesignating paragraph (d) as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 4279.108 Eligible borrowers.

(a) *Type of entity.* A borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A cooperative organization is a cooperative or an entity, not chartered as a cooperative, that operates as a cooperative in that it is owned and operated for the benefit of its members, including the manner in which it distributes its dividends and assets. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

* * * * *

(4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation).

* * * * *

(c) *Rural area.* The business financed with a B&I Guaranteed Loan must be located in a rural area, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility in the eligible rural area, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Rural areas are any areas other than:

- (1) A city or town that has a population of greater than 50,000 inhabitants; and
- (2) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

(d) *Loans to cooperative organizations.* (1) B&I loans to eligible cooperative organizations may be made in principal amounts up to \$40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of loans exceeding \$25 million does not exceed 10 percent of the funds available for the fiscal year.

(2) Cooperative organizations that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is

used for a project or venture that is located in a rural area.

(3) B&I loans to eligible cooperative organizations may also be made in non-rural areas provided:

(i) The primary purpose of the loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(ii) The applicant satisfactorily demonstrates that the primary benefit of the loan will be to provide employment for rural residents;

(iii) The principal amount of the loan does not exceed \$25 million; and

(iv) The total amount of loans guaranteed under this section does not exceed 10 percent of the funds available for the fiscal year.

(4) An eligible cooperative organization may refinance an existing B&I loan provided that the existing loan is current and performing, the existing loan is not and has not been in payment default (more than 30 days late) or the collateral of which has not been converted, and there is adequate security or full collateral for the new B&I loan.

* * * * *

■ 3. Section 4279.113 is amended by redesignating paragraphs (j) through (aa) to be paragraphs (k) through (bb); by revising paragraphs (i) and newly redesignated paragraph (r); and by adding a new paragraph (j) to read as follows:

§ 4279.113 Eligible loan purposes.

* * * * *

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided that the purchase is required for all of their borrowers.

(j) Purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity.

(1) The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(2) Notwithstanding §§ 4279.131(d) and 4279.137, the individual farmer or rancher may provide financial information in the manner that is generally required by commercial

agricultural lenders in order to obtain a loan.

* * * * *

(r) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Except as provided for in § 4279.108(d)(4) of this subpart, existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt), the lender is providing better rates or terms, and the refinancing is a secondary part (less than 50 percent) of the overall loan.

* * * * *

■ 4. Section 4279.119(a) is revised to read as follows:

§ 4279.119 Loan guarantee limits.

(a) *Loan amount.* The total amount of Agency loans to one borrower, including: The guaranteed and unguaranteed portions; the outstanding principal and interest balance of any existing Agency guaranteed loans; and new loan request, must not exceed \$10 million, except as outlined in paragraphs (a)(1) and (2) of this section.

(1) The Administrator may, at the Administrator's discretion, grant an exception to the \$10 million limit for loans of \$25 million or less under the following circumstances:

(i) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in § 4279.155 of this subpart;

(ii) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guarantee is not approved;

(iii) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding \$10 million; and

(iv) Any request for a guaranteed loan exceeding the \$10 million limit must be submitted to the Agency in the form of a preapplication. The preapplication must be submitted to the National Office for review and concurrence before encouraging a full application.

(2) The Secretary, whose authority may not be redelegated, may approve guaranteed loans in excess of \$25 million, at the Secretary's discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with § 4279.108(d)(1) of this subpart.

* * * * *

■ 5. Section 4279.144 is revised to read as follows:

§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). In accordance with USPAP, the Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to "Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire" and "Phase I Environmental Site Assessment," both published by the American Society of Testing and Materials. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

■ 6. Section 4279.161 is amended by adding a sentence at the end of the introductory text and by adding paragraph (c) to read as follows:

§ 4279.161 Filing preapplications and applications.

* * * * * Guaranteed loans of \$600,000 and less may be processed under paragraph (b) or (c) of this section, but guaranteed loans exceeding \$600,000 must be processed under paragraph (b) of this section.

* * * * *

(c) *Applications of \$600,000 and less.* Guaranteed loan applications may be processed under this paragraph if the request does not exceed \$400,000. Beginning in fiscal year 2004, this limit may be increased on a case-by-case basis to \$600,000 provided that the Agency determines that there is not a significant increased risk of a default on the loan. Applications may be resubmitted under paragraph (b) of this section when the application under this paragraph contains insufficient information for the Agency to guarantee the loan. Applications submitted under this paragraph must use the Agency's short

application form and include the information contained in paragraphs (b)(3), (5), (7), (8), and (11) of this section. The lender must have the documentation identified in paragraph (b) of this section, with the exception of paragraphs (b)(1), (2), (14), and (15), available in its file for review.

Dated: November 2, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04-24886 Filed 11-8-04; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2004-18579; Directorate Identifier 2004-CE-19-AD; Amendment 39-13856; AD 2004-23-01]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC-7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC-7 airplanes with any Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump (Pilatus part number 968.84.11.401; 968.84.11.403; or 968.84.11.404) installed. This AD requires you to check the airplane logbook to determine whether any installed fuel booster pump has been modified with spiral wrap to protect the wire leads and has the suffix letter "B" added to the serial number of the fuel booster pump identification plate. If any installed fuel booster pump has not been modified, you are required to inspect any installed fuel booster pump wire lead for defects; if defects are found, replace the fuel booster pump with a modified fuel booster pump with spiral wrap that protects the wire leads; or if no defects are found, install spiral wrap to protect any wire leads and add the suffix letter "B" to the serial number of the fuel booster pump identification plate. The pilot is allowed to do the logbook check. If the pilot can positively determine that the fuel booster pump wire leads with spiral wrap are installed following the service information and that the suffix letter "B" is included in the serial number of the fuel booster pump identification plate, no further action is required. This AD is the result of mandatory continuing airworthiness

information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct any defects in the leads of any fuel booster pump, which could result in electrical arcing. This failure could lead to a fire or explosion in the fuel tank.

DATES: This AD becomes effective on December 27, 2004.

As of December 27, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: SupportPC12@pilatus-aircraft.com or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465-9099; facsimile: (303) 465-6040. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741-6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2004-18579.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC-7 airplanes. The FOCA reports that there have been 11 reports of damaged fuel boost pump wire leads from 9 Model PC-12 airplanes that have a similar type design. Further, the FOCA reports that it is possible that the wire leads to the left and right fuel pumps are damaged. This could possibly cause electrical arcs from the leads in an air/fuel mixture.

What is the potential impact if FAA took no action? Any electrical arcing could lead to a fire or explosion in the fuel tank.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC-7 airplanes with any Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump (Pilatus part number 968.84.11.401; 968.84.11.403; or 968.84.11.404) installed. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 20, 2004 (69 FR 516161). The NPRM proposed to require you to check the airplane logbook to determine whether any installed fuel booster pump has been modified with spiral wrap to protect the wire leads and has the suffix letter "B" added to the serial number of the fuel booster pump identification plate. If any installed fuel booster pump has not been modified, you are required to inspect any installed fuel booster pump wire lead for defects; if defects are found, replace the fuel booster pump with a modified fuel booster pump with spiral wrap that protects the wire leads; or if no defects are found, install spiral wrap to protect any wire leads and add the suffix letter "B" to the serial number of the fuel booster pump identification plate. The pilot is allowed to do the logbook check. If the pilot can positively determine that the fuel booster pump wire leads with spiral wrap are installed following the service information and that the suffix letter "B" is included in the serial number of the fuel booster pump identification plate, no further action is required.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.