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

Farm Service Agency

7 CFR Part 762

RIN 0560–AG53

Guaranteed Loans—Rescheduling Terms and Loan Subordinations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to revise the regulations governing the Farm Service Agency (FSA) guaranteed farm loan program. This rule proposes to allow guaranteed loans to be rescheduled with a balloon payment under certain circumstances. Proposed also are provisions to allow low-risk subordinations to be approved by the appropriate Agency personnel at the field level rather than the National Office, allow lenders to make debt installment payments in accordance with lien priorities, payment due dates and cash flow projections, correct a wording error, clarify that packager and consultant fees for servicing of guaranteed loans are not covered by the guarantee, and clarify the amount a lender can bid at a foreclosure sale. The Agency is proposing these changes as a result of input from program participants and problems in administering current provisions. The changes proposed will improve Agency regulations without increasing risk to the Government.

DATES: Comments concerning this proposed rule must be submitted by October 20, 2003 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Address all comments on the rule to Craig Nehls, Branch Chief, Guaranteed Loan Servicing and Inventory Property Branch, Loan Servicing and Property Management Division, FSA, USDA, 1400 Independence Avenue, STOP 0523, Washington, DC 20250–0523; Fax: (202) 690–1196. Comments should reference the volume, date and page number of this issue of the **Federal Register**. You may submit comments via electronic mail to *Joseph_Pruss@wdc.usda.gov,* or at *http://www.regulations.gov.* Public inspection of this rule and all comments are available during regular business hours by contacting the Branch Chief at (202) 720–1984.

FOR FURTHER INFORMATION CONTACT: Joseph Pruss, Senior Loan Officer, Farm Service Agency; telephone: (202) 690–2854; Facsimile: (202) 690–1196; e-mail: *Joseph_Pruss@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities, because it does not require any specific actions on the part of the borrower or the lenders. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601).

Environmental Evaluation

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that 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 except that lender servicing under this rule will apply to loans guaranteed prior to the effective date of the rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

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

Unfunded Mandates

This rule contains no Federal mandates, as defined by title II of Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 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.

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.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

Federal Assistance Programs

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

10.406 Farm Operating Loans

10.407 Farm Ownership Loans

Discussion of the Proposed Rule

The first proposed change is in section 762.140(d), regarding payment of loan installments. Currently, the regulations require that guaranteed loan installments always be paid before unguaranteed loans held by the same lender. The Agency has found that this requirement is very difficult to implement. In practice the only way the FSA guaranteed loan payment can be made first is if all the payments come due at the same time. A typical farming operation may have payments coming due from several different creditors throughout the year. It is virtually impossible to get all payments structured so that they come due at the same time. The Agency recognizes that in the normal course of business, lien priority, payment due dates and cash flow are the determining factors in deciding the order in which loans are paid. The Agency's original intent was to assure that lenders were not paying non-guaranteed loans at the expense of the guaranteed loan. However, this risk only occurs at liquidation where proceeds will be applied in accordance with lien priority. Outside of a liquidation scenario, all installments would be paid since the loan would usually be in a current status. FSA proposes to change the wording in this section, to allow loan installments to be paid in accordance with lien priority, the due date, and the cash flow projection, in the normal course of business, which is in accordance with actual commercial lending practices. Therefore, the proposed rule states that when it becomes evident that a borrower will be unable to make all installments, the lender will be required to apply payments to the guaranteed loan before unguaranteed loans held by the same lender. The effect will be to maximize collection on the guaranteed loan, and minimize any loss claim. Lenders are responsible for servicing the entire loan in a reasonable manner.

The second proposed change is section 762.142(c)(3)(ii), regarding the Agency's approval requirements for certain subordinations. Currently, the regulations allow the lender to subordinate its interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so another lender can make a loan for annual production expenses. Approval of subordinations for real estate, machinery, and other basic security can only be granted by the Agency's National Office, if such action is in the Agency's best interest. However, there are situations where devolution of this approval authority is justified and would lead to more prompt service to Agency borrowers and lenders. The Agency proposes to place the approval authority at the local level for situations when a lender is simply refinancing existing indebtedness secured by a lien superior to the guaranteed loan, and no additional debt is being incurred. This is often done to allow a borrower to obtain better rates and/or terms on the loan, which in turn helps the borrower meet all of the borrower's loan obligations. There is no additional risk to the guaranteed loan, which remains in the same exact lien and security position after the subordination as it was before the subordination. It is not necessary for subordination requests of this nature to be routed to the Agency's national office, which may result in a time lag for approval or rejection.

The third proposed change is in section 762.144(c)(3)(iii), which discusses the payment of interest on loans which the Agency has repurchased. The proposed change will correct the second sentence where the words ''holder'' and ''lender'' were inadvertently reversed. The holder, not the lender would be requesting the Agency to repurchase the loan, after requesting the lender to repurchase the loan.

The fourth change proposed would allow balloon payments in restructuring guaranteed loans. Section 762.145 governs the restructuring of guaranteed loans, and paragraph (b)(4) of this section specifically prohibits the use of balloon payments in the restructuring process. FSA is proposing to lift this restriction and allow a lender to restructure a guaranteed loan with a balloon payment. This is standard practice in the lending industry, and lenders participating in the guaranteed program have requested the ability to use balloon payments in restructuring. FSA has made numerous administrative policy changes to enable lenders to service guaranteed loans in the same manner they service their non-guaranteed loans. This proposed change would provide lenders with another tool to use in servicing loans guaranteed by FSA, consistent with tools utilized for non-guaranteed loans.

Current regulations allow lenders to use balloon payments when originating loans, but not in loan servicing. Unequal installments can be used in both loan making and loan servicing, and lenders can use both unequal installments and balloon payments in originating a new loan. These tools are used primarily when establishing new enterprises or building facilities, situations where cash flow would be inadequate to support full amortization of the loan for some period of time. These same tools would be helpful, and may be necessary in a rescheduling situation such as recovering from a natural disaster, or a barn fire or other calamity, for instance. Definitions of unequal installments and balloon payments will be added in the FSA Handbook 2–FLP upon publication of the final rule.

To insure that this proposal would not result in additional exposure or loss to the Government, a provision requiring adequate security to be available at the time the balloon payment comes due will be included, in 7 CFR 762.145(b)(4). For real estate security a current appraisal would be required, with depreciation projected to the time the balloon payment is due for depreciable property such as buildings and improvements. Also, for equipment security, a current appraisal will be required. The lender will be required to project the security value of the equipment at the time the balloon payment is due, based on the remaining life of the equipment, or using the depreciation schedule on the borrower's Federal income tax return. Under no circumstances may livestock or crops alone be used as security for a guaranteed loan that is to be rescheduled using a balloon payment.

Allowing the restructuring of loans using a balloon payment schedule does not unduly increase the Government's risk. This change will allow more delinquent borrowers to achieve a feasible plan and ultimately be successful in paying their loans in full. FSA estimates that less than 200 loans per year will be rescheduled with a balloon payment. Currently, when a borrower becomes delinquent, a lender may choose to not continue with the loan since a balloon payment schedule is prohibited. Therefore, a viable operation may have to be liquidated due to limited loan servicing alternatives. Use of a balloon payment under those circumstances will reduce the likelihood that FSA will pay a loss under the guarantee and allow the lender to retain the guarantee. As in the current rule, 7 CFR 762.145(b)(4) permits the lender to allow unequal installments so long as a feasible plan can be projected when the installments are scheduled to increase.

As to the fifth change, FSA proposes to revise the security requirements in section 762.145(b)(7) for loans restructured with balloon payments. This change is necessary to prevent undue risk to the Government from adding balloon payment options as a loan servicing tool. Revising the rule to

permit balloon payments, but retaining the not fully secured position (or no security as long as the lender's security position is not diminished) of the current rule would increase FSA's exposure on loss claims and would be inconsistent with Government policy as expressed in Office of Management and Budget Circular A–129, November 29, 2000, Appendix A, II 3 (OMB Circular A–129). OMB Circular A–129 requires that agencies control the risk and cost of their credit programs and follow sound financial practices which include requiring lenders to have a substantial stake in full repayment in accordance with the loan. See 65 FR 71215. Therefore, FSA proposes to require loans restructured with balloon payments to be fully secured when the balloon payment becomes due.

The sixth proposed change would clarify § 762.149(d) and (i), to provide that packager fees and outside consultant fees for servicing guaranteed loans are not covered by the guarantee, and will not be paid in either the estimated or final loss claim.

Lenders should note that §§ 762.105 and 762.106 contain eligibility requirements for lenders participating in the guaranteed loan program, as well as a description of the classifications of lenders, and specific requirements for lenders in each classification. Under these sections, all lenders are required to have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested. A lender participating in the guaranteed loan program, therefore, should have adequately trained loan officers and analysts on staff to make and service guaranteed loans and should not usually have to rely on outside or contracted individuals to service their loans. Therefore, FSA will not pay any packager or servicing fees for guaranteed loans. At times, a lender may find it necessary to hire outside help to service its loan portfolio, or may find it financially advantageous to have someone from outside the lender analyze the loan portfolio; however the cost of these services will not be passed on to the Government in the event of a loss. It was never the intent of the Agency to cover such fees, and if the Agency were to cover such fees it would be tantamount to paying the lender's labor costs. The Lender's Agreement specifies that liquidation costs do not include the lender's in-house expenses.

The seventh proposed change would clarify § 762.149(h)(3) to specify that if a lender bids at a foreclosure sale, their bid will be either the net recovery value plus the prior lien amount, or the unpaid balance of the loan plus the prior lien amount, whichever is less. Under current regulations the lender has the authority to determine the amount it will bid at the foreclosure sale, starting at the amount which is the lesser between the net recovery value or the unpaid loan balance. Because the lender eventually could bid more than the net recovery value of the property, other potential bidders are discouraged from bidding, thus increasing the probability that the lender will take title to the property. If a lender is then unable to sell the security for at least the net recovery value, plus the expenses of holding and selling the property, under current regulations the lender's loss claim increases accordingly. After this excess bid amount is applied to the borrower's account, the loss claim amount is negotiated, which discourages the lender from taking responsibility for the excess bid.

The proposed rule, which limits the bid amount to the lesser of the net recovery value plus the prior lien or the unpaid loan balance plus the prior lien, will result in decreasing the Government's losses. Decreasing the bid amount will encourage potential bidders to bid on the property, thus increasing the likelihood of reducing the lender's loss claim. In situations where the lender bids an amount more than the lesser of the net recovery plus the prior lien, or the unpaid balance of the debt plus the prior lien, this action may be considered negligent servicing. To the extent that negligent servicing reduces the recovery on the loan, the resulting loss claim will be reduced. The Agency believes that the proposed rule will give lenders the incentive to maximize recovery, thus decreasing Government losses.

List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—agriculture, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 762 is proposed to be amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

2. Amend § 762.140 by revising paragraph (d) to read as follows:

§ 762.140 General servicing responsibilities.

* * * * *

(d) *Loan installments.* In the normal course of business, loan installments may be paid according to lien priority, payment due date, and where applicable, in accordance with an approved cash flow projection. When it becomes evident that a borrower will be unable to make all installments, guaranteed loan installments will be paid before unguaranteed loans held by the same lender.

3. Amend § 762.142 by designating paragraph (c)(3)(ii) as (c)(3)(iii) and adding a new paragraph (c)(3)(ii) to read as follows:

§ 762.142 Servicing related to collateral.

* * * * *

(c) * * *

(3) * * *

(ii) The lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination.

* * * * *

4. Amend § 762.144 by revising paragraph (c)(3)(iii) to read as follows:

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

* * * * *

(c) * * *

(3) * * *

(iii) In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

* * * * *

5. Amend § 762.145 by revising paragraphs (b)(4) and (b)(7) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(4) Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will

be derived from a current appraisal adjusted for depreciation that occurs until the balloon payment is due. If the loan is rescheduled with unequal installments, a feasible plan, as defined in § 762.102(b), must be projected for when installments are scheduled to increase.

* * * * *

(7) The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. A loan restructured with a balloon payment must be projected to be fully secured at the time the balloon payment becomes due, in accordance with paragraph (b)(4) of this section.

* * * * *

6. Amend § 762.149 by adding paragraph (d)(3), revising paragraph (h)(3) and amending paragraph (i)(2) by adding a sentence as follows:

§ 762.149 Liquidation.

* * * * *

(d) * * *

(3) Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated loss claim.

* * * * *

(h) * * *

(3) When it is necessary to enter a bid at a foreclosure sale, the lender will bid the lesser of the net recovery value plus the prior lien or the unpaid guaranteed loan balance plus the prior lien. A lender bid for other than the lesser of the net recovery value plus the prior lien or the unpaid balance of the debt plus the prior lien may be considered negligent servicing, and the resulting loss claim may be reduced to the extent that the negligent servicing reduced the recovery on the loan.

(i) * * *

(2) * * * Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in a final loss claim.

* * * * *

Signed at Washington, DC on August 5, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–21040 Filed 8–18–03; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AH26

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 5 to the Certificate of Compliance. Amendment No. 5 would modify the present cask system design to add another dry shielded canister (DSC), designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 pressurized water reactor assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask under a general license.

DATES: Comments on the proposed rule must be received on or before September 18, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH26) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@ nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML031820427.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P, –52B, and –61BT cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on November 3, 2003. However, if the NRC