

Section 409 of the FSA (7 U.S.C. 1599) authorizes the USDA to initiate an administrative proceeding against anyone who violates any FSA provision or regulation, and to issue an order to cease and desist from continuing such violation. In the event the violator does not cease and desist, the order may be enforced in the Federal courts pursuant to section 411 of the FSA (7 U.S.C. 1601).

If a violation is knowingly committed, sections 406(a) (7 U.S.C. 1596(a)) and 407 of the FSA (7 U.S.C. 1957) allow the USDA to initiate criminal charges against such violators. This criminal provision also applies to violations which are the result of gross negligence or the result of the violator's failure to make a reasonable effort to be informed of the pertinent facts. Violators of this provision may be punished by a fine of \$1,000 for the first offense, and \$2,000 for each subsequent offense. In addition, civil settlements described in section 406(b) of the FSA (7 U.S.C. 1596(b)) apply to violations that are not deemed to be due to gross negligence. Violators of this provision shall forfeit not less than \$25 or more than \$500 for each violation.

AMS is committed to enforcement of the labeling provisions of the FSA through its ongoing program of testing and monitoring, and encourages persons with knowledge of FSA violations to report them to: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20705-2325; Telephone: (301) 504-9237; Fax: (301) 504-8098; E-mail: [Richard.Payne2@usda.gov](mailto:Richard.Payne2@usda.gov).

Dated: September 17, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 771

#### Rural Housing Service

#### Rural Business—Cooperative Service

#### Rural Utilities Service

### Farm Service Agency

#### 7 CFR Part 1941

RIN 0560-AG69

#### Boll Weevil Eradication Loan Program

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

**ACTION:** Final rule.

**SUMMARY:** This action is being taken to finalize provisions of the interim regulations published May 16, 1997, that implemented the Boll Weevil Eradication Loan Program. This rule also implements changes intended to continue to assist in the eradication of the boll weevil, and promote cooperation between the United States Department of Agriculture (USDA) and State chartered organizations with regard to boll weevil eradication.

**DATES:** This rule is effective September 24, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Richard W. Sharp, Senior Loan Officer, Funds Management/Direct Loans Branch, Farm Service Agency (FSA). Telephone: 202-690-0651; facsimile: 202-690-1117; e-mail: [Richard\\_Sharpe@wdc.usda.gov](mailto:Richard_Sharpe@wdc.usda.gov)

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act

FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities. This program applies only to chartered organizations whose primary mission is the eradication of the boll weevil. These loans cannot be made to small entities or individuals. Thus, a Regulatory Flexibility Analysis is not required.

#### Environmental Impact Statement

A Finding Of No Significant Impact was published for the interim rule on April 21, 1997. There is no significant change in this final rule. Therefore, no

further environmental assessments are 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. This rule will not affect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before bringing any action for judicial review.

#### Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs 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

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 as well as in the private sector. 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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act

FSA has reviewed this rule to determine the applicability of the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320.3(c)(4), there are fewer than 10 persons or organizations from which the collection of information can reasonably be expected within a 12-month period. The information requirements of this program do not impact a substantial majority of the industry, nor do the requirements meet the rule of general applicability. Therefore, the provisions of 5 CFR part 1320 do not apply to this rule.

#### New CFR Part

This rule will relocate the Boll Weevil Eradication Loan Program from 7 CFR part 1941, subpart C, to 7 CFR part 771. This will better organize the regulation and incorporate it with the other FSA regulations.

## Discussion of the Final Rule

A total of 24 responses were received on the interim rule. Comments were received from two Congressional Representatives, five agricultural businesses, one cotton industry firm, 14 boll weevil organizations, and two farmers. All comments were positive and highly supportive of the program. All comments praised the Government's entry into the boll weevil eradication process with the creation of the Boll Weevil Eradication Loan Program. The Agency received no substantive comments recommending change.

The Boll Weevil Eradication Loan Program became effective upon publication of the May 16, 1997, interim rule. The Animal and Plant Health Inspection Service (APHIS) provides eligible grower organizations: (1) Equipment; (2) technical and administrative support; and (3) cost-sharing not to exceed 30 percent of the program costs. Program costs not provided by APHIS must be paid by the eligible grower organizations through the collection of producer assessments. FSA's funding is needed by the grower organizations to finance the high initial costs of the eradication program. Full producer assessments, without the FSA loan program, would create significant financial hardships for most of the cotton producers. The APHIS Boll Weevil Eradication Program and the FSA Boll Weevil Eradication Loan Program have both been very successful.

Although the FSA program has been substantially successful, two changes need to be made to the loan program. The changes are based upon a House of Representatives Committee on Appropriations recommendation in connection with the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Public Law 106-78) (2000 Act). In House Report 106-157, page 44, the Committee on Appropriations directed the Secretary of Agriculture to consider all eligible applicants, private or state-run, organized to eradicate the boll weevil, to be determined potential candidates for the boll weevil eradication loan program. The Committee also recommended that candidates be considered eligible for FSA's boll weevil eradication loan program whether or not they are financially capable of securing operating funds elsewhere.

These two changes are made in the final rule at § 771.2 by adding a definition of "State Organization" and in § 771.4 by adding that an eligible applicant may be a state organization. The no credit elsewhere requirement

has been removed from the latter section.

These recommendations have merit based upon 5 years of joint APHIS and FSA experience in the eradication program. When this loan program began, all boll weevil eradication programs were private non-profit corporations. This fact has changed. The structure of all of the individual state-run boll weevil organizations is extremely similar. All State agricultural departments/authorities have various amounts of oversight authority for their respective boll weevil program. Most eradication finances go through an accounting review tied loosely to the State's treasury. Some operations require state approval of FSA loans. The eradication of the boll weevil is in the public's interest, whether the operation is private or public, therefore this recommendation was adopted. As to the second recommendation, there are a small number of boll weevil eradication organizations within the boundaries of the United States. States tend to have varying amounts of funding available to the eradication organizations depending upon the economic status of the state and the economic times. State organizations generally will be able to obtain credit elsewhere. The purpose of the loan program is the elimination of all boll weevils. All qualified boll weevil eradication programs should have equal access to FSA funding regardless of whether funding is available elsewhere. Therefore, this eligibility requirement has been eliminated. These changes are made in the final rule at §§ 771.2 and 771.4.

### Justification for Effective Date

An immediate effective date for this rule is justified under 5 U.S.C. 553(d)(1) because the rule relieves two restrictions for boll weevil eradication loan applicants. The requirement that the applicant be a non-profit corporation has been modified to also allow state organizations to qualify for loans. The requirement that applicants be unable to obtain credit elsewhere also has been removed.

### List of Subjects

#### 7 CFR Part 771

Loan programs—agriculture, Pesticides and pests, Cotton.

#### 7 CFR Part 1941

Loan programs—agriculture, Pesticides and pests, Cotton.

FSA adopts the interim rule published on May 16, 1997 (62 FR 26918-26921) as final with changes discussed above.

Accordingly, 7 CFR Chapters VII and XVIII are amended as follows:

## 7 CFR Chapter VII

1. Part 771 is added to chapter VII, subchapter D, to read as follows:

### PART 771—BOLL WEEVIL ERADICATION LOAN PROGRAM

Sec.

- 771.1 Introduction.
- 771.2 Abbreviations and definitions.
- 771.3 [Reserved]
- 771.4 Eligibility requirements.
- 771.5 Loan purposes.
- 771.6 Environmental requirements.
- 771.7 Equal opportunity and non-discrimination requirements.
- 771.8 Other Federal, State, and local requirements.
- 771.9 Interest rates, terms, security requirements, and repayment.
- 771.10 [Reserved]
- 771.11 Application.
- 771.12 Funding applications.
- 771.13 Loan closing.
- 771.14 Loan monitoring.
- 771.15 Loan servicing.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; and Pub. L. 104-180, 110 Stat. 1569.

#### § 771.1 Introduction.

The regulations in this part set forth the terms and conditions under which loans are made through the Boll Weevil Eradication Loan Program. The regulations in this part are applicable to applicants, borrowers, and other parties involved in the making, servicing, and liquidation of these loans. The program's objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

#### § 771.2 Abbreviations and definitions.

The following abbreviations and definitions apply to this part:

(a) Abbreviations:

*APHIS* means the Animal and Plant Health Inspection Service of the United States Department of Agriculture, or any successor Agency.

*FSA* means the Farm Service Agency, its employees, and any successor agency.

(b) Definitions:

*Extra payment* means a payment derived from the sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan, will not be considered as an extra payment.

*Non-profit corporation* means a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate whose net earnings are not distributable

to any private shareholder or individual, and which qualifies under the Internal Revenue Service code.

*Restructure* means to modify the terms of a loan. This may include a modification of the interest rate and/or repayment terms of the loan.

*Security* means assets pledged as collateral to assure repayment of a loan in the event of default on the loan.

*State organization* means a quasi-state run public operation exclusively established and managed by state and/or non-state employees, with all employees currently dedicated to the specific task of eliminating the boll weevil from the cotton growing area of the state.

#### § 771.3 [Reserved]

#### § 771.4 Eligibility requirements.

- (a) An eligible applicant must:
- (1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept the determination by APHIS as to an organization's qualification);
  - (2) Have the appropriate charter and/or legal authority as a non-profit corporation or as a State organization specifically organized to operate the boll weevil eradication program in any State, biological, or geographic region of any State in which it operates;
  - (3) Possess the legal authority to enter into contracts, including debt instruments;
  - (4) Operate in an area in which producers have approved a referendum authorizing producer assessments and in which an active eradication or post-eradication program is underway or scheduled to begin no later than the fiscal year following the fiscal year in which the application is submitted;
  - (5) Have the legal authority to pledge producer assessments as security for loans from FSA.
- (b) Individual producers are not eligible for loans.

#### § 771.5 Loan purposes.

- (a) Loan funds may be used for any purpose directly related to boll weevil eradication activities, including, but not limited to:
- (1) Purchase or lease of supplies and equipment;
  - (2) Operating expenses, including but not limited to, travel and office operations;
  - (3) Salaries and benefits.
- (b) Loan funds may not be used to pay expenses incurred for lobbying, public relations, or related activities, or to pay interest on loans from the Agency.

#### § 771.6 Environmental requirements.

No loan will be made until all Federal and state statutory and regulatory

environmental requirements have been complied with.

#### § 771.7 Equal opportunity and non-discrimination requirements.

No recipient of a boll weevil eradication loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

#### § 771.8 Other Federal, State, and local requirements.

- (a) In addition to the specific requirements in this subpart, loan applications will be coordinated with all appropriate Federal, State, and local agencies.
- (b) Borrowers are required to comply with all applicable:
- (1) Federal, State, or local laws;
  - (2) Regulatory commission rules; and
  - (3) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:
    - (i) Borrowing money, pledging security, and raising revenues for repayment of debt;
    - (ii) Accounting and financial reporting; and
    - (iii) Protection of the environment.

#### § 771.9 Interest rates, terms, security requirements, and repayment.

- (a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by FSA, based upon the cost of Government borrowing for instruments on terms similar to that of the loan requested.
- (b) *Term.* The loan term will be based upon the needs of the applicant to accomplish the objectives of the loan program as determined by FSA, but may not exceed 10 years.

- (c) *Security requirements.* (1) Loans must be adequately secured as determined by FSA. FSA may require certain security, including but not limited to the following:
- (i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by State law;
  - (ii) Investments and deposits of the applicant; and
  - (iii) Capital assets or other property of the applicant or its members.
- (2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue.

The distribution will be based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

#### § 771.10 [Reserved]

#### § 771.11 Application.

A complete application will consist of the following:

- (a) An application for Federal assistance (available in any FSA office);
- (b) Applicant's financial projections including a cash flow statement showing the plan for loan repayment;
- (c) Copies of the applicant's authorizing State legislation and organizational documents;
- (d) List of all directors and officers of the applicant;
- (e) Copy of the most recent audited financial statements along with updates through the most recent quarter;
- (f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;
- (g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;
- (h) Evidence of acceptable liability insurance policies;
- (i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgments;
- (j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;
- (k) Any other information deemed to be necessary by FSA to render a decision.

#### § 771.12 Funding applications.

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

#### § 771.13 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through its

authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

(i) Anticipated default on FSA debt;

(ii) Potential recall vote of an assessment referendum; or

(iii) Being named as a defendant in litigation;

(3) Submission of other specific financial reports for the borrower;

(4) The right of deferral under 7 U.S.C. 1981a; and

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

#### **§ 771.14 Loan monitoring.**

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that time frame.

#### **§ 771.15 Loan servicing.**

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal.

(c) *Restructuring.* The provisions of 7 CFR part 1951, subpart S, are not applicable to loans made under this section. However, FSA may restructure loan debts; provided:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within FSA budgetary restrictions; and

(3) The loan objectives cannot be met unless the loan is restructured.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

#### **7 CFR Chapter XVIII**

#### **PART 1941—OPERATING LOANS**

2. The authority citation for Part 1941 continues to read as follows:

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

#### **Subpart C—[Removed]**

3. Subpart C is removed.

Signed at Washington, DC, on September 18, 2002.

**J.B. Penn,**

*Under Secretary for Farm and Foreign Agricultural Services.*

[FR Doc. 02-24191 Filed 9-19-02; 3:06 pm]

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#### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Aviation Administration**

#### **14 CFR Part 25**

**[Docket No. NM228, Special Conditions No. 25-213-SC]**

#### **Special Conditions: Raytheon Aircraft Company Model HS.125 Series 700A Airplanes; High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Duncan Aviation. These

airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modifications, under three separate supplemental type certificate (STC) projects, incorporate the installation of a Collins FDS2000 Electronic Flight Instrument System (EFIS), a dual Collins AHS-3000A Attitude Heading Reference System (AHARS), and a dual IS&S Air Data System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 17, 2002. Comments must be received on or before October 24, 2002.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM228, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM228. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2145; facsimile (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific