# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Parts 761, 762, 764, and 767

**RIN 0560–AH82**

### Farm Loan Programs

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Farm Service Agency (FSA) regulations for direct and guaranteed Farm Operating loans and Farm Ownership loans, and the lease and disposal of inventory property. This rule implements changes required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The maximum loan amount authorized for direct Farm Ownership loans and direct Farm Operating loans is being increased. The existing Beginning Farmer Downpayment Loan Program is being amended to include socially disadvantaged farmers and to reduce the size of the required down payment. Regulations governing lease and disposal of FSA's real estate inventory, which currently give priority to beginning farmers, are being amended to also give socially disadvantaged farmers priority.

**DATES:** *Effective Date:* January 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** James Radintz, Director, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone: 202–720–1632; e-mail: *jim.radintz@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

## Background

FSA makes and services a variety of direct and guaranteed loans to farmers who are temporarily unable to obtain private commercial credit. FSA also provides direct loan customers with credit counseling and supervision so they have a better chance for success. FSA loan applicants are often beginning farmers and socially disadvantaged farmers who do not qualify for conventional loans because of insufficient net worth or established farmers who have suffered financial setbacks due to natural disasters or economic downturns. FSA loans are tailored to a customer's needs and may be used to buy farmland and to finance agricultural production. All of the changes in this rule are required by the 2008 Farm Bill (Pub. L. 110–246) enacted June 18, 2008. This law repealed Public Law 110–234, dated May 22, 2008, that inadvertently omitted Title III (Trade) and reenacted those provisions with the missing title.

This rule changes the defined term ''Beginning Farmer Downpayment Loan'' in section 761.2, Abbreviations and definitions, to ''Downpayment Loan'' because these types of loans now will be available to socially disadvantaged ''farmers'' as well. This change is required by section 5004 of the 2008 Farm Bill. Corresponding reference changes are made in parts 761, 762, and 764, including changes to the definitions of ''Farm Ownership loan'' and ''Socially disadvantaged applicant or farmer.''

The Farm Ownership (FO) loan program assists beginning and established farmers to purchase farmland, to build or repair structures or other fixtures, and to promote soil and water conservation. The Operating Loan (OL) loan program assists producers with the purchase or lease of items needed for a successful farm operation, such as livestock, farm equipment, feed, seed, fuel, farm chemicals, insurance, or other operating expenses. Additionally, these loans can be used to pay for minor improvements to buildings, costs associated with land and water development, family subsistence, as well as to refinance debts under certain conditions. This rule amends section 761.8, Loan Limitations, to increase the maximum loan amount authorized for both types of loans from $200,000 to $300,000. These changes are required by sections 5003 and 5102 of the 2008 Farm Bill. Corresponding changes have been made to the combination loan limits in paragraph (a)(4) to change $200,000 to $300,000 and in paragraph (a)(6) to change $700,000 to $800,000. (**Note:** The limit for emergency loans of $500,000 remains unchanged.)

This rule amends section 762.122 to correct a paragraph reference.

The current Beginning Farmer Downpayment Loan Program is used to assist qualified beginning farmers finance the purchase of a family farm. This rule modifies part 764 to expand this program to include socially disadvantaged farmers and make other changes required by section 5004 of the 2008 Farm Bill. To reflect the expansion of the program, the name of the program is being changed from ''Beginning Farmer Downpayment Loan Program'' to ''Downpayment Loan Program.''

This rule also reduces the minimum down payment that the applicant must provide from ten percent to five percent by amending section 764.203, Limitations. In the current regulation, the lower of the purchase price or the appraised value of the farm must not exceed $250,000. This section currently provides that downpayment loans may not exceed 40 percent of the purchase price or the appraised value of the farm to be acquired and total financing provided by the Agency and by all other creditors must not exceed 90 percent of the purchase price or the appraised value of the farm. This rule amends section 764.203 in accordance with the 2008 Farm Bill to specify that each downpayment loan may not exceed 45 percent of the least of (1) the purchase price of the farm, (2) the appraised value of the farm, or (3) $500,000. Total financing provided by the Agency and all other creditors may not exceed 95 percent.

This rule amends section 764.204, Rates and terms, to provide that the interest rate for downpayment loans will be the regular direct FO rate less 4 percent with a floor of 1.5 percent rather than the current set rate of 4 percent. The maximum loan term also is being extended from 15 to 20 years as required by the 2008 Farm Bill. Additionally, this section is amended accordingly to provide that non-Agency financing cannot have a balloon payment due within the first 20 years of the loan, which is an extension from the current

15 years to correspond with the change in loan term.

In accordance with section 5302 of the 2008 Farm Bill, this rule amends several sections on leasing and disposing of inventory real estate. Section 767.101 is revised to give socially disadvantaged farmers all rights regarding lease eligibility, terms, and the option to purchase currently only extended to beginning farmers. Sections 767.151 through 767.153 are revised to ensure that socially disadvantaged farmers are granted rights to purchase inventory property that currently apply to only beginning farmers, including the right to purchase the property before it is offered to the general public and the waiver of the 10 percent down payment. The current provision in the regulation specifying that property becomes available only after the rights of the previous owner have expired is not changing.

**Notice and Comment**

The notice and comment provisions of 5 U.S.C. 553 and the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking, provide that certain rules may go forward without public notice and comment when they are in the public interest. This regulation adopts changes mandated in the 2008 Farm Bill, sections 5003, 5004, 5102, and 5302. All these provisions are nondiscretionary in nature and became effective when the 2008 Farm Bill became law. Furthermore, these changes impose no additional paperwork burden. Accordingly, this rule is published without requesting public comment and will be effective 30 days from the date of publication in the **Federal Register**.

**Executive Order 12866**

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB was not required to review this final rule.

**Regulatory Flexibility Act**

This rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–602), since FSA is not required to publish a notice of proposed rulemaking for this rule.

**Environmental Evaluation**

The environmental aspects of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508) and the FSA regulations for compliance with NEPA (7 CFR part 1940, subpart G). The changes are non-discretionary, and, as such, no new significant circumstances or information relevant to environmental concerns have been established. In consideration of the previous analysis documented in the 2003 Programmatic Environmental Assessment (PEA) and the reasons outlined in the 2004 Finding of No Significant Impact (FONSI), FSA has concluded that this final rule will not have a significant impact on the quality of the human environment either individually or cumulatively, and, therefore, is categorically excluded and not subject to an environmental assessment or environmental impact statement in accordance with 7 CFR 1940.310(e)(3). The Final PEA and a copy of the FONSI are available at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=enl-ea.*

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

**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. This rule is not retroactive. It will not effect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

**Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on states, the relationship between the national government and the states, or 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.

**Unfunded Mandates**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA) (Pub. L. 104–4) for State, local, and tribal governments or the private sector. In addition, FSA was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Federal Assistance Programs**

The changes in this rule affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans.

10.407—Farm Ownership Loans.

**Paperwork Reduction Act**

The Agency's information collection requirements, currently approved under OMB control numbers 0560–0234, 0560–0237, and 0560–0238, are not affected by the final rule. The rule does not increase the information collection burden.

**E-Government Act Compliance**

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects**

*7 CFR Part 761*

Loan programs—Agriculture.

*7 CFR Part 762*

Agriculture, Credit, Loan programs—Agriculture.

*7 CFR Part 764*

Agriculture, Credit, Loan programs—Agriculture.

*7 CFR Part 767*

Agriculture, Credit, Loan programs—Agriculture.

■ For the reasons discussed above, this rule amends 7 CFR chapter VII, Subchapter D—Special Programs, as follows:

## PART 761—GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for part 761 continues to read as follows:

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

■ 2. Amend § 761.2 paragraph (b) as follows:

■ a. Remove the definitions of ''Beginning Farmer Downpayment Loan'' and ''Socially disadvantaged applicant,''

■ b. Add definitions, in alphabetical order, for ''Downpayment Loan'' and

''Socially Disadvantaged Applicant or Farmer'' to read as set forth below, and

■ c. In the definition of ''Farm Ownership loan'' remove the words ''Beginning Farmer.''

**§ 761.2 Abbreviations and definitions.**

* * * * *

(b) * * *

*Downpayment Loan* is a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

* * * * *

*Socially Disadvantaged Applicant or Farmer* is an individual or entity who is a member of a socially disadvantaged group. For an entity, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

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**§ 761.8 [Amended]**

■ 3. Amend § 761.8 as follows:

■ a. In paragraph (a)(1) remove the words ''Beginning Farmer,''

■ b. In paragraphs (a)(1)(i), (a)(2)(i), and (a)(4) remove the amount ''$200,000'' and add, in its place, the amount ''$300,000,'' and

■ c. In paragraph (a)(6) remove the amount ''$700,000'' and add, in its place, the amount ''$800,000.''

■ 4. Revise § 761.210 paragraph (a) to read as follows:

**§ 761.210 Transfer of funds.**

* * * * *

(a) August 1 of each fiscal year, the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers and socially disadvantaged farmers under the Downpayment loan program; and

* * * * *

## PART 762—GUARANTEED FARM LOANS

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

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

**§ 762.121 [Amended]**

■ 6. Amend § 762.121 paragraph (b)(1) by removing the words ''beginning farmer.''

**§ 762.122 [Amended]**

■ 7. Amend § 762.122 paragraph (b)(2) by removing the reference to ''(c)(1) of this section'' and add in its place a reference to ''(b)(1) of this section.''

**§ 762.124 [Amended]**

■ 8. Amend § 762.124 paragraph (e)(3) by removing the words ''for beginning farmers.''

■ 9. Revise § 762.130 paragraph (d)(4)(iii)(C) to read as follows:

**§ 762.130 Loan approval and issuing the guarantee.**

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(C) Loans to farmers involved in the direct downpayment program.

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## PART 764—DIRECT LOAN MAKING

■ 10. The authority citation for part 764 continues to read as follows:

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

**§ 764.1 [Amended]**

■ 11. Amend § 764.1 paragraph (b)(1) by removing the words ''Beginning Farmer.''

**§ 764.103 [Amended]**

■ 12. Amend § 764.103 paragraphs (c) and (e) by removing the words ''beginning farmer.''

### Subpart E—Downpayment Loan Program

■ 13. Revise Subpart E heading to read as shown above.

**§ 764.201 [Amended]**

■ 14. Amend § 764.201 as follows:

■ a. In the heading remove the words ''Beginning Farmer'' and

■ b. In the undesignated paragraph remove the words ''Beginning Farmer'' the first time they appear and add the words ''or socially disadvantaged farmer'' at the end.

**§ 764.202 [Amended]**

■ 15. Amend § 764.202 paragraph (b) by adding the words ''or socially disadvantaged farmer'' at the end.

■ 16. Amend § 764.203 as follows:

■ a. In paragraph (a)(2) remove the number ''10'' and add, in its place, the number ''5,''

■ b. Revise paragraphs (b) and (c) to read as set forth below, and

■ c. Remove paragraph (d).

**§ 764.203 Limitations.**

* * * * *

(b) Downpayment loans will not exceed 45 percent of the lesser of:

(1) The purchase price,

(2) The appraised value of the farm to be acquired, or

(3) $500,000.

(c) Financing provided by the Agency and all other creditors must not exceed 95 percent of the purchase price. Financing provided by eligible lenders may be guaranteed by the Agency under part 762 of this chapter.

■ 17. Amend § 764.204, as follows:

■ a. Revise paragraph (a) to read as set forth below,

■ b. In paragraph (b)(1) remove the words ''Beginning Farmer,'' and

■ c. In paragraphs (b)(1) and (2) remove the number ''15'' and add, in its place, the number ''20.''

**§ 764.204 Rates and terms.**

(a) *Rates.* The interest rate for Downpayment loans will be the regular direct FO rate minus 4 percent, but in no case less than 1.5 percent.

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**§ 764.205 [Amended]**

■ 18. Amend § 764.205 introductory paragraph by removing the words ''Beginning Farmer.''

## PART 767—INVENTORY PROPERTY MANAGEMENT

■ 19. The authority citation for part 767 continues to read as follows:

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

**§ 767.101 [Amended]**

■ 20. Amend § 767.101 paragraphs (a)(2), (c)(2), (d)(3), and (g) by adding the words ''or socially disadvantaged farmer'' immediately after the words ''beginning farmer.''

**§ 767.151 [Amended]**

■ 21. Amend § 767.151 as follows:

■ a. In paragraphs (a), (b), and (d) add the words ''or socially disadvantaged farmers'' immediately after ''beginning farmers'' and

■ b. In paragraph (c) add the words ''or socially disadvantaged farmer'' immediately after the words ''beginning farmer.''

**§ 767.152 [Amended]**

■ 22. Amend § 767.152 paragraph (a) by adding the words ''or socially disadvantaged farmer'' immediately after the words ''beginning farmer.''

**§ 767.153 [Amended]**

■ 23. Amend § 767.153 paragraph (b)(3) by removing the words ''non-beginning farmer purchasers'' and adding, in their place, the words ''purchasers who are

not beginning farmers or socially disadvantaged farmers.''

Signed at Washington, DC, on December 2, 2008.

**Glen L. Keppy,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. E8–28903 Filed 12–5–08; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 946

**[Docket No. AMS–FV–08–0037; FV08–946–2 FR]**

### Irish Potatoes Grown in Washington; Modification of Late Payment and Interest Charge Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the late payment and interest charge regulation prescribed under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule revises the date interest is charged on late assessment payments from 30 to 60 days from the billing date shown on the handler's assessment statement received from the Committee. This rule will contribute to the efficient operation of the marketing order by reducing billing for nominal late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

**DATES:** *Effective Date:* December 9, 2008.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Teresa.Hutchinson@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule modifies the late payment and interest charge regulation prescribed under the order. This rule revises the date interest is charged on late assessment payments from 30 to 60 days from the billing date shown on the handler's assessment statement received from the Committee. This rule will contribute to the efficient operation of the order by reducing the number of nominal billings for late payment interest charges on handlers who pay within 60 days of the billing date, while continuing those interest charges necessary to encourage payment, thereby ensuring that adequate funds are available to cover the Committee's authorized expenses.

The Washington potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate and the authority to recommend late payment charges or interest charges on late payment, are formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Section 946.41 of the order specifies that if handlers do not pay their assessments within the time prescribed by the Committee, the assessments may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the Committee with approval of USDA.

Prior to this regulatory change, section 946.141 of the order's administrative rules and regulations prescribed that the Committee impose a monthly interest charge of one percent of the unpaid balance on any handler who fails to pay his or her assessment within thirty days of the billing date. The interest charge regulation has been effective since May 25, 1995 (60 FR 27683). At that time, the committee expressed difficulty with handlers that were continually late with their assessment payments and recommended the interest charge to be incurred 30 days after the billing date. It was believed that the charges were high enough to encourage timely payment and that this would be an effective means to ensure the Committee had adequate funds to administer the program.

The Committee unanimously recommended this rule during a video conference meeting held on April 16, 2008, followed by an unanimous mail vote. The Committee has determined that most handlers pay their assessments within 60 days but there are a few that pay later than 60 days. The interest billing that occurs 30 days after the billing date has proven to be administratively cumbersome as the amounts billed are nominal amounts and many times the handler's payment is received shortly after the bill including interest is mailed.

As an example, the Committee's budget for the current fiscal year (2008–2009) is $38,600 and estimated assessment income is $35,000. Since there are approximately 43 handlers, the average each handler will pay in assessments is approximately $814. Committee records indicate that for the most recent fiscal year, there were 316 invoices billed to handlers. The average amount on an invoice was $110.44, with