

Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this proposed rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this proposed rule will not have significant impact on a substantial number of small entities. No small entities meet the statutory criteria for participation in the program that is the subject of this rulemaking.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the "Act"), OMB must approve all "collection of information" by RUS. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this proposed rule will involve less than 10 persons and do not require approval under the provisions of the Act.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512-1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related

notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109-Stat. 48)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

The Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 901 *et seq.*) authorizes the Secretary of Agriculture (the "Secretary") to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to the Rural Utilities Service (RUS) under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, *see* 7 CFR 1700.25.

Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, 116 Stat. 413) ("FSRIA") amends the RE Act by adding a new section 313A: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (7 U.S.C. 940c-1). FSRIA became law on May 13, 2001, and requires the Secretary of Agriculture to promulgate regulations for issuing guarantees under section 313A.

Section 313A of the RE Act provides that under certain specified circumstances, the Secretary shall guarantee payments on bonds or notes issued by cooperative or other lenders organized on a not-for-profit basis.

Section 313A provides limits to the amount of a guarantee, the purposes for the guarantee, and the qualifications of eligible lenders seeking a guarantee of a bonds or notes. Section 313A requires that a guarantee be no greater than the principal amount of outstanding loans of the lender for electrification or telephone purposes that have been made concurrently with loans approved for such purposes under the RE Act. The section also provides for charging an annual fee of 30 basis points on the outstanding balance of the guaranteed bonds or notes to lenders that receive a guarantee under section 313A. Proceeds of the fee are required, except in limited circumstances specified in section 313A, to be deposited into the Rural Economic Development Subaccount. From this subaccount, zero interest loans and grants are made to promote rural development programs as described in section 313(b)(2)(B) of the RE Act (7 U.S.C. 940c-1(b)(2)(B)).

The FSRIA limits eligibility under this program to not-for-profit third party lenders that make loans for any electrification or telephone purpose eligible for assistance under the Rural Electrification Act of 1936. Currently there are two lenders that meet this eligibility criterion; the National Rural Utilities Cooperative Finance Corporation (CFC) and CoBank.

RUS is proposing new procedures for the guarantee program established by section 313A. In order to produce a comprehensive regulation that will carry out the objectives set forth in the FSRIA, and provide for a program consistent with established RUS guiding principles, RUS discussed program options with other federal agencies, and examined recently established federal guarantee programs. Furthermore, RUS retained the services of an outside consultant with experience in capital markets and establishing federal guarantee programs to assist it in the development of this program.

Requests for section 313A guarantees will be considered according to eligibility requirements and the strength of the lender seeking such a guarantee. A guaranteed lender must demonstrate by sufficient evidence in its application and periodically while any guarantee is in effect, that the guaranteed lender will at all times be able to make timely payments on the bonds or notes being guaranteed.

Program Summary

The rule establishes general standards for issuing a guarantee consistent with statutory requirements. The general standards provide limitations on the bonds and the use of the proceeds.