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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Parts 4279 and 4287

RIN 0570–AA34

Business and Industry Guaranteed Loan Program Annual Renewal Fee

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: In this final rule the Rural Business-Cooperative Service (the Agency) amends its regulation for the Business and Industry (B&I) Guaranteed Loan Program to provide the authority for the charging of an annual renewal fee on all loans obligated after the publication of the final rule. This annual renewal fee is in addition to the existing one-time guarantee fee. Changes to modify the program regulations were originally proposed on February 28, 2005. The intended effect of this rule is to reduce the subsidy rate for guaranteed loans allowing the budget authority dollar level to support a greater level of assistance to the public (*i.e.*, higher supportable loan level). A notice will be published in the **Federal Register** each fiscal year that will establish the guarantee fee rate and any annual renewal fee rate for loans obligated during that fiscal year.

DATES: This rule is effective October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Rick Bonnet, Special Projects/Programs Oversight Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, telephone (202) 720–1804, or by e-mail to *rick.bonnet@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be non-significant and has not been 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.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule, (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 this rule, and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ‘‘Environmental Program.’’ The Agency 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.*, this is a categorical exclusion and therefore an Environmental Impact Statement is not required.

Government Paperwork Elimination Act (GPEA) Statement

The Agency is committed to compliance with GPEA, which requires Government agencies, in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this regulation have been approved by OMB under control number 0570–0017.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pubic Law 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, agencies generally 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 one year. When such a statement is needed for a rule, section 205 of UMRA generally requires agencies 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.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the Agency has determined that this action would not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Executive Order 13132

It has been determined that, under Executive Order 13132, Federalism, 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.

Executive Order 13175

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, imposes requirements on USDA in the development of regulatory policies that have tribal implications or preempt tribal law. USDA has determined that the proposed regulation does not have a substantial direct effect on one or more Indian tribes or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

Background

The cost of the B&I Guaranteed Loan Program has gone up in recent years. This is due to higher defaults and lower interest rates. In the meantime, there is still an interest in funding this program in order to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. To do that in a cost efficient manner for the taxpayer, the Agency is implementing its authority to impose an annual renewal fee. This will reduce the subsidy allowing the Agency, without additional costs to the taxpayer, to maintain the level of assistance that has been historically provided for this program to meet demand.

The annual renewal fee is based on similar fees charged in the Small Business Administration (SBA) programs. Additionally, this type of fee is consistent with the recently authorized Renewable Energy Systems and Energy Efficiency Improvements Guaranteed Loan Program within the Agency. The borrower pool for the B&I Guaranteed Loan Program is even more likely to be able to afford this type of fee compared to other programs mentioned because the amount of the fee is anticipated to be less.

The SBA 7(a) Loan Guarantee Program and the B&I program are similar in that they both require an initial one-time fee; and 7(a) loans have an annual fee similar to the one being implemented for the B&I program. In fiscal year (FY) 1996, SBA made major changes in its 7(a) program by lowering the maximum percentage of the loan which could be guaranteed and increasing both the initial fee and the annual fee, which made the program more expensive and less valuable for borrowers and lenders. We examined changes in loan volume and loss levels associated with these changes, and found no convincing evidence that the FY 1996 changes decreased demand for the 7(a) program.

Subsidy rates are established using historic loss data from the program and other assumptions. In recent years the subsidy rate has increased significantly, resulting in a reduction in the amount of loans that could be guaranteed with the same budget authority. In the absence of additional budgetary authority, the proposed annual fee is necessary to cover expected losses from the program. The effect of the fee on the loan demand and program activity over the long term will depend on the size of the fee and other factors not related to the fee, including interest rates and general economic growth. This change is prudent and cost efficient and will allow us to maintain the level of assistance going to rural America at a reasonable cost to the taxpayer.

The Agency is waiving the 30-day waiting period between publication of the rule and when it will take effect. The reason is to make all loans obligated in FY 2006 subject to the same fee structure. Having loans obligated with different fee structures in the same fiscal year could cause confusion and impose an additional administrative burden on lenders. Also, because lenders will not need to make the first renewal fee payments to the Agency until January of 2007, and because the Final Rule makes only minor changes to the Proposed Rule, program participants are not expected to be disadvantaged by this rule's earlier implementation. For these reasons, the Agency finds that good cause exists for this rule's immediate implementation.

Comments on the Proposed Rule and Responses

The following paragraphs summarize the comments received and the Agency responses. We received 11 responses of which 8 were from the lending community (3 from the same bank), 2 were from Agency employees, and one was from a national association. Generally, the comments were negative. The only positive comment was that the annual renewal fee was the best alternative to reduced funding levels in the short term.

Several changes were made to the final rule as a result of comments received. The most significant change was to give the Agency discretion in canceling the guarantee for nonpayment of the renewal fee and to charge lenders interest on any unpaid renewal fees.

Seven respondents felt an annual fee would be a financial burden/hardship on the borrowers, especially new businesses and those with more limited recourses. The Agency acknowledges that the fee will most likely represent an increased cost to the borrower. However, because the B&I Guaranteed Loan Program is intended only for credit-worthy businesses, the Agency feels the additional financing cost will not jeopardize the success of the businesses assisted. Agencies, in accordance with the Federal Credit Reform Act of 1990 and guidance provided in OMB Circular A–129, Appendix A(II)(4)(b)(1), are to establish fees structures at levels that minimize subsidy costs while supporting achievement of program objectives. The Agency is taking measures to improve the quality of its portfolio and reduce loan losses. Nevertheless, the Agency is required to further minimize subsidy costs. The Agency feels the renewal fee is the most equitable solution to increased costs without jeopardizing the achievement of program objectives.

Six respondents felt the renewal fee would make the B&I Guaranteed Loan Program more complicated and difficult to market. The uncertainty of the amount of the fee percentage rate would make it especially difficult to market, which would discourage lenders from marketing the program. USDA could lose its competitive advantage with SBA if additional SBA-like fees are imposed. One respondent commented that the fee rate could change if the initial application was received in a fiscal year, but not obligated until the next fiscal year, which would further hamper marketing activities. The Agency acknowledges the program complexity and marketing challenges the renewal fee will add, but a reduction in the subsidy cost is needed to maintain the level of assistance that has been historically provided for this program. As described in § 4279.107(b)(1) of the rule, the Agency will publish the fee percentage rate in a **Federal Register** notice each fiscal year. The Agency will publish the notice as soon as the fee percentage rate has been determined to provide as much advanced notice as possible. All loans obligated that fiscal year will be subject to that same fee percentage rate for the full term of the loan.

Four respondents felt the increased cost of the program would result in fewer loans and businesses being assisted, thereby hindering economic development and job creation. The Agency had a Regulatory Impact Analysis completed to determine the impact that a renewal fee would likely have on loan demand. As mentioned earlier in this document, in FY 1996, SBA made major changes in its 7(a) program by lowering the maximum percentage of the loan which could be guaranteed and increasing both the initial fee and the annual fee, which made the program more expensive and less valuable for borrowers and lenders. A review of the changes in loan volume and loss levels associated with these changes revealed no convincing evidence that the FY 1996 changes decreased demand for the 7(a) program. Due to the similarities of the programs, the Agency believes the results will be similar.

One respondent felt the additional cost of the program would undermine worthwhile projects and discourage the more credit-worthy businesses from participating in the program. This could result in a decline in the quality of the overall portfolio over time, which would tend to increase costs to the government. The Regulatory Impact Analysis revealed that there was no convincing evidence that the changes in the SBA program resulted in a decrease in the quality of the SBA 7(a) loan portfolio. Due to the similarities of the programs, the Agency believes the impact on the B&I Guaranteed Loan Program will be similar.

Six respondents felt it would be a significant administrative burden for the lenders. The Agency appreciates the burden this change will impose. In an effort to keep the burden to a minimum, the Agency is combining the lender's existing semiannual reporting requirement with the renewal fee payment process. Currently, lenders are required to report the principal and interest balances, amount advanced, interest rate, loan status, and amount ahead or behind schedule on each guarantee loan, semiannually. The Agency is web-enabling this process where the lender will be required to enter a secure website, enter the currently required information, as of December 31 of each year, and the system will calculate the annual fee due on that loan. The fee will then be drawn from a specified account in the lender's bank on a specified date. This action will satisfy both the annual renewal fee payment and the semi-annual status report to the Agency. The due date of the renewal fee was also changed from March 1 to January 31 to correspond with the due date of the lender's semiannual status reporting requirement, but the date any unpaid fee was considered delinquent remained April 1.

One respondent suggested a change in the name of the form used to collect the renewal fee. The final rule is revised to remove the name of the form to provide maximum flexibility in the mechanism used to collect the fee.

One respondent thought the renewal fee should be paid monthly or quarterly to reduce the financial impact from one annual payment. The Agency acknowledges the language in the proposed rule suggested the borrower was expected to pay the renewal fee once a year. The Agency anticipates lenders will likely factor the renewal fee into their interest rate structure, and collect the renewal fee as a part of the regular borrower payments. The language is therefore revised to give the lender maximum flexibility in establishing a rate structure. The final rule does not stipulate who is responsible for the fee. The lender actually pays the fee, but may pass the fee on to the borrower.

One respondent felt the fee should be restricted to the guaranteed portion of the loan. The Agency agrees, and the fee will be charged only on the guaranteed portion of the loan.

One respondent felt the Agency should refund the ''unearned'' portion of the renewal fee when the borrower prepays its loan before the end of the year, after the renewal fee has been paid for the year. The Agency is not adopting this suggestion as the administrative burden on lenders and the Agency would be prohibitive. The amount of the fee on the average B&I loan is relatively small. With the proposed annual renewal fee rate of ⅛ of one percent for FY 2006, the amount of the fee on a $1 million B&I loan for a full year would be only $1,250. Depending on how a lender structures the loan payments, the borrower may not benefit from the return of ''unearned'' fees. Section 4279.107 states the guarantee fees are non-refundable, and this has been the policy in the B&I Guaranteed Loan Program for many years.

One respondent felt there could be significant servicing and legal issues for the Agency if a guarantee is cancelled for non-payment of the renewal fee. The Agency agrees and is changing the language to state that the Agency may, at its discretion, cancel the guarantee to the lender for nonpayment of the renewal fee. Language is also added where the Agency will charge the lender interest on any delinquent renewal fees and will deduct any unpaid renewal fees from any loss payment made to the lender.

One respondent suggested alternatives to the renewal fee, such as varying the amount of initial fee, based on the size of the loan. The Agency has statutory limitations on the maximum initial fee that may be charged and is charging the maximum initial fee allowed, with certain limited exceptions. The Agency feels the annual renewal fee approach is the most equitable alternative.

Two respondents felt the proposed rule change would be a violation of statute. The Farm Security and Rural Investment Act of 2002 (Farm Bill) gives the Secretary authority to assess a 1-time fee in an amount that does not exceed 2 percent of the guaranteed principal portion of the loan. One respondent indicated that the proposed rule eliminates the language concerning the cap, which could result in a perceived conflict with the terms of the Farm Bill. The Agency is replacing the language concerning the 2 percent cap. The other respondent suggested the renewal fee violates statute because the combined fees will very likely exceed 2 percent cap established in the statute. The Rural Development Manager's Report to the 2002 Farm Bill states that the 2 percent initial fee limit established by statute does not prevent the Secretary from imposing annual fees which may be needed to preserve an appropriation level.

One respondent stated that § 4279.107(b)(2) states the holder's rights will continue in effect as specified in the Loan Note Guarantee, and suggested the reference should be to the Assignment Guarantee Agreement instead. The final rule references both the Loan Note Guarantee and the Assignment Guarantee Agreement.

Several technical changes not made in the proposed rule were made in the final rule to help Agency employees and lenders administer the program. Language was also added to the B&I loan servicing regulation (7 CFR Part 4287, subpart B) to reference the annual renewal fee requirements described in § 4279.107.

Section 4279.107(a)(2)(i) of the proposed rule stated the rate of the fee is the rate in effect at the time of the original issuance of the Conditional Commitment for the loan and will remain in effect for the life of the loan. It is very unlikely, but possible, for the Conditional Commitment and loan obligation to occur in different fiscal years. Because the fee rate and obligation are tied to the fiscal year in the Agency's accounting system, the controlling event was changed to the date of obligation.

List of Subjects in 7 CFR Parts 4279 and 4287

Loan programs—Business and industry—Rural development assistance, Rural areas.

■ Therefore, chapter XLII, title 7, Code of Federal Regulations, is amended as follows:

PART 4279—GUARANTEED LOANMAKING

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

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

Subpart B—Business and Industry Loans

■ 2. Section 4279.107 is revised to read as follows:

§ 4279.107 Guarantee fees.

For all new loans there are two types of non-refundable guarantee fees to be paid by the lender. The fees may be passed on to the borrower. The fees may be forwarded to the Agency through an electronic funds transfer system or, at the Agency's discretion, by a check payable to USDA using a USDA-approved form.

(a) *Initial guarantee fee.* The initial fee is paid at the time the Loan Note Guarantee is issued. The fee may be included as an eligible loan purpose in the guaranteed loan. The fee will be the rate (a specified percentage not to exceed 2 percent) multiplied by the principal loan amount, multiplied by the percent of guarantee. Subject to specified annual limits set by the Agency, the initial guarantee fee may be reduced to 1 percent if the borrower's business supports value-added agriculture and results in farmers benefiting financially, or

(1) Is a high impact business development investment in accordance with § 4279.155(b)(5), and

(2) Is located in a rural community that:

(i) Is experiencing long-term population decline and job deterioration, or

(ii) Has remained persistently poor over the last 60 years, or

(iii) Is experiencing trauma as a result of natural disaster, or

(iv) Is experiencing fundamental structural changes in its economic base.

(b) *Annual renewal fee.* The annual renewal fee is paid once a year and is required to maintain the enforceability of the guarantee as to the lender.

(1) The rate of the annual renewal fee (a specified percentage) is established by Rural Development in an annual notice published in the **Federal Register**, multiplied by the outstanding principal loan balance as of December 31 of each year, multiplied by the percent of guarantee. The rate is the rate in effect at the time the loan is obligated, and will remain in effect for the life of the loan.

(2) Annual renewal fees are due on January 31. Payments not received by April 1 are considered delinquent and, at the Agency's discretion, may result in cancellation of the guarantee to the lender. Holders' rights will continue in effect as specified in the Loan Note Guarantee and Assignment Guarantee Agreement. Any delinquent annual renewal fees will bear interest at the note rate and will be deducted from any loss payment due the lender. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual renewal fee payment will be due January 31 of the second year following the date the Loan Note Guarantee was issued.

PART 4287—SERVICING

■ 3. The authority citation for part 4287 continues to read as follows:

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

Subpart B—Servicing Business and Industry Guaranteed Loans

§ 4287.107 [Amended]

■ 4. Section 4287.107(a) is revised to read as follows:

* * * * *

(a) *Lender reports and annual renewal fee.* The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using a USDA-approved status report or other approved format. The lender will transmit the annual renewal fee to the Agency simultaneously with the December 31 semiannual status report in accordance with 7 CFR part 4279, subpart B, § 4279.107.

* * * * *

Dated: September 27, 2005.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 05–19722 Filed 9–30–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 02–024–2]

Stall Reservations at Import Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations.

DATES: The interim rule became effective on December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Freeda Isaac, Senior Staff Veterinarian, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on December 9, 2002 (67 FR 72827–72830, Docket No. 02–024–1), we amended the regulations in 9 CFR part 93 regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations. Under the new fee structure, persons who cancel a reservation 30 business days or more prior to the reservation date will be charged 25 percent of the reservation fee; persons who cancel a reservation 15 to 29 business days prior to the reservation date will be charged 50 percent of the reservation fee; and persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee. We took that action to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space and to recover the fixed cost associated with operating quarantine facilities when stall space goes unused. This interim rule was intended to improve the occupancy rate of stall space, and, therefore, the efficiency of import quarantine facilities.

Comments on the interim rule were required to be received on or before February 7, 2003. We received three comments by that date. The comments were from a horse industry group, a transportation association, and a transport company. We have carefully considered all of the comments we received. They are discussed below.

Note: In the ''Background'' section of the interim rule, we stated that brokers are required to have certain diagnostic tests performed on their horses and that these tests must be processed at National Veterinary Services Laboratories (NVSL). Some commenters interpreted this statement to mean that we were requiring that horses be pretested for the diseases dourine, glanders, piroplasmosis, and infectious equine anemia and that this pretesting be performed at NVSL. That perception is incorrect. Pretesting is not a requirement but may be done at the discretion of the importer or agent. If pretesting is done, importers may utilize NVSL. the Animal and Plant Health