

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service****7 CFR Part 1720**

RIN-0572-ZA06

**Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes****AGENCY:** Rural Utilities Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) proposes to amend its regulations for the guarantee program for cooperative and other not-for-profit lenders that make loans for eligible electric and telephone purposes. These proposed amendments implement changes adapted in the Food, Conservation, and Energy Act of 2008. The intended effect is to update agency regulations to reflect current statutory authority.

**DATES:** Written comments on this proposed action must be received by RUS no later than April 6, 2010.

**ADDRESSES:** Submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. In the "Search Documents" box, enter RUS-09-Electric-0005, check the box under the Search box labeled "Select to find documents accepting comments or submissions," and click on the GO>> key. To submit a comment, choose "Send a comment or submission," under the Docket Title. In order to submit your comment, the information requested on the "Public Comment and Submission Form," must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the "Public Comment and Submission Form.") Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "How to Use this Site" link.

- *Postal Mail/Commercial Delivery:* Please send your comments addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5162, 1400 Independence Avenue, SW., Washington, DC 20250-1522. Please state that your comment refers to Docket No. RUS-09-Electric-0005.

*Other Information:* Additional information about RUS and its programs is available at <http://www.rurdev.usda.gov/index.html>.

**FOR FURTHER INFORMATION CONTACT:**

Karen L. Larsen, Policy Analysis and Loan Management Staff, Office of the Assistant Administrator, Electric Programs, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5165-S, Washington, DC 20250-1560. Telephone (202) 720-9545; e-mail: [karen.larsen@wdc.usda.gov](mailto:karen.larsen@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This proposed 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.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the Electric Loan and Loan Guarantee program is 10.850 Rural Electrification Loans and Loan Guarantees. The catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at <http://www.cfda.gov>. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's on-line bookstore at <http://bookstore.gpo.gov>.

**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) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

**Information Collection and Recordkeeping Requirements**

This rule contains no new reporting or recordkeeping burdens under the Office of Management and Budget (OMB) that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**National Environmental Policy Act Certification**

The Administrator of 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.

**Regulatory Flexibility Act Certification**

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agency is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this proposed rule meets the applicable standards in section 3 of the Executive Order.

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**Executive Order 13132, Federalism**

The policies contained in this proposed 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.

**Executive Order 13211**

This proposed rule does not have any adverse effects on energy supply, distribution, or use should the proposal be implemented. The Agency has determined that the preparation of Statement of Energy Effects under Executive Order 13211 is not required.

**E-Government Act Compliance**

The Agency 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.

### Background

The Rural Electrification Act of 1936 (the “RE Act”) (7 U.S.C. 901 *et seq.*) authorizes 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 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) (FSRIA) amended the RE Act to add section 313A entitled “Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes.” This section created a new loan guarantee program. Final regulations implementing the program were published in the **Federal Register** on October 29, 2004, 69 FR 63045.

Section 6106(a)(1)(A) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) amended section 313A of the RE Act extending the program authorization from September 30, 2007, to September 30, 2012, expanding eligible loan purposes, and setting an annual limit of \$1,000,000,000 on the total amount of guarantees approved by the Secretary during a fiscal year, subject to the availability of funds. Prior to the 2008 amendment the total amount of a lender’s bonds and notes that could be guaranteed under section 313A was limited to the total amount of loans made by the lender concurrently with a loan approved by the Secretary under the RE Act.

Section 6106(a)(1)(B) further amended section 313A of the RE Act by removing the provision prohibiting the recipient from using any amount obtained from the reduction in funding costs as a result of a guarantee under section 313A to reduce the interest rate charged on a new or concurrent loan. New loan guarantees will not be subject to this limitation.

The proposed amendments to part 1720 revise the current regulations to

implement the changes made by the 2008 Farm Bill and to clarify existing provisions.

### List of Subjects in 7 CFR Part 1720

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by amending part 1720 as follows:

### PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

1. The authority citation for part 1720 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*; 7 U.S.C. 940c–1.

2. Revise § 1720.2 to read as follows:

#### § 1720.2 Background.

The Rural Electrification Act of 1936 (the “RE Act”) (7 U.S.C. 901 *et seq.*) authorizes 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 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) (FSRIA) amended the RE Act to include a new program under section 313A entitled Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes. This measure directed the Secretary of Agriculture to promulgate regulations that carry out the Program. The Secretary published the regulations for the program in the **Federal Register** as a final rule on October 29, 2004, adding Part 1720 to Title 7 of the Code of Federal Regulations. Section 6106(a)(1)(A) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) amended section 313A of the RE Act by replacing the level of “concurrent loans” as a factor limiting the amount of bonds and notes that could be guaranteed and inserted

“for eligible electrification or telephone purposes” as the limitation on the amount of bonds and notes that can be guaranteed under section 313A up to an annual program limit of \$1,000,000,000, subject to availability of funds. Section 6106(a)(1)(B) further amended section 313A of the RE Act by removing the prohibition against the recipient using an amount obtained from the reduction in funding costs as a result of a new guarantee under section 313A to reduce the interest rate charged on a new or concurrent loan.

3. Amend § 1720.3 by adding the definition of “Eligible Loan” to read as follows:

#### § 1720.3 Definitions.

\* \* \* \* \*

*Eligible Loan* means a loan that a guaranteed lender extends to a borrower for up to 100 percent of the cost of eligible electrification or telephone purposes consistent with the RE Act.

\* \* \* \* \*

4. Amend § 1720.4 by revising paragraphs (a)(2), (3), (4), and (b)(2) to read as follows:

#### § 1720.4 General standards.

(a) \* \* \*

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding eligible loans previously made by the guaranteed lender;

(3) The proceeds of the guaranteed bonds will not be used directly or indirectly to fund projects for the generation of electricity; and

(4) The guaranteed lender will not use any amounts obtained from the reduction in funding costs provided by a loan guarantee issued prior to June 18, 2008, to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in 7 CFR part 1710, of this chapter.

(b) \* \* \*

(2) Maintain sufficient collateral equal to the principal amount outstanding, for guaranteed lenders having a credit rating below “A–” on its senior secured debt without regard to the guarantee, or in the case of a lender that does not have senior secured debt, a corporate (counterparty) credit rating below “A–” without regard to the guarantee. Collateral shall be in the form of specific and identifiable unpledged securities equal to the value of the guaranteed amount. In the case of a guaranteed lender’s default, the U.S. government claim shall not be subordinated to the claims of other creditors, and the indenture must provide that in the event

of default, the government has first rights on the asset. Upon application and throughout the term of the guarantee, guaranteed lenders not subject to collateral pledging requirements shall identify, with the concurrence of the Secretary, specific assets to be held as collateral should the credit rating of its senior secured debt, or its corporate credit rating, as applicable, without regard to the guarantee fall below "A - ." The Secretary has discretion to require collateral at any time should circumstances warrant.

\* \* \* \* \*

5. Amend § 1720.5 by revising paragraphs (a)(1) and (b)(1) to read as follows:

**§ 1720.5 Eligibility criteria.**

(a) \* \* \*

(1) A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis; and

\* \* \* \* \*

(b) \* \* \*

(1) The guaranteed lender must furnish the Secretary with a certified list of the principal balances of eligible loans then outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding; and

\* \* \* \* \*

6. Amend § 1720.6 by revising paragraph (a)(7) to read as follows:

**§ 1720.6 Application process.**

(a) \* \* \*

(7) Evidence of a credit rating, from a Rating Agency, on its senior secured debt or its corporate credit rating, as applicable, without regard to the government guarantee and satisfactory to the Secretary; and

\* \* \* \* \*

7. Amend § 1720.7 by revising paragraphs (b)(3) and (4), adding new paragraphs (b)(5) and (6), and revising paragraph (d) to read as follows:

**§ 1720.7 Application evaluation.**

\* \* \* \* \*

(b) \* \* \*

(3) The applicant's demonstrated performance of financially sound business practices as evidenced by reports of regulators, auditors and credit rating agencies;

(4) The extent to which the applicant is subject to supervision, examination, and safety and soundness regulation by an independent federal agency;

(5) The extent of concentration of financial risk that RUS may have

resulting from previous guarantees made under Section 313A of the RE Act; and

(6) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, or generate other economic benefits, including the amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c(b)(2)(A)), after payment of the subsidy amount.

\* \* \* \* \*

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received; provided, however, that in order to facilitate competitive evaluation of applications, the Secretary may from time to time defer a decision until more than one application is pending. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.4 and 1720.6 of this part. The Secretary reserves the discretion to approve an application for an amount less than that requested.

8. Amend § 1720.8 by revising paragraphs (a)(3), (4), and (8) to read as follows:

**§ 1720.8 Issuance of the guarantee.**

(a) \* \* \*

(3) Prior to the issuance of the guarantee, the applicant must certify to the Secretary that the proceeds from the guaranteed bonds will be applied to fund new eligible loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans;

(4) The applicant provides a certified list of eligible loans and their outstanding balances as of the date the guarantee is to be issued;

\* \* \* \* \*

(8) The applicant shall provide evidence of a credit rating on its senior secured debt or its corporate credit rating, as applicable, without regard to the guarantee and satisfactory to the Secretary; and

\* \* \* \* \*

9. Amend § 1720.12 by revising paragraph (a)(5) to read as follows:

**§ 1720.12 Reporting requirements.**

(a) \* \* \*

(5) Credit rating, by a Rating Agency, on its senior secured debt or its corporate credit rating, as applicable, without regard to the guarantee and satisfactory to the Secretary; and

\* \* \* \* \*

10. Revise § 1720.13 to read as follows:

**§ 1720.13 Limitations on guarantees.**

In a given year the maximum amount of guaranteed bonds that the Secretary may approve will be subject to budget authority, together with receipts authority from projected fee collections from guaranteed lenders, the principal amount of outstanding eligible loans made by the guaranteed lender, and Congressionally-mandated ceilings on the total amount of credit. The Secretary may also impose other limitations as appropriate to administer this guarantee program.

Dated: January 8, 2010.

**Jonathan Adelstein,**

*Administrator, Rural Utilities Service.*

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**BILLING CODE 3410-15-P**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2009-1179; Airspace Docket No. 09-ASW-35]

**Proposed Amendment of Class E Airspace; Magnolia, AR**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Magnolia, AR. Decommissioning of the Magnolia non-directional beacon (NDB) at Magnolia Municipal Airport, Magnolia, AR, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Magnolia Municipal Airport.

**DATES:** Comments must be received on or before March 22, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2009-1179/Airspace Docket No. 09-ASW-35, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.