

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Rural Utilities Service

#### 7 CFR Part 4279

RIN 0570-AA81

#### Conditions of Guarantee

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Business-Cooperative Service is amending its regulations for the Business and Industry Guaranteed Loan Program to ensure the Agency has sufficient right(s) for reimbursement when an Agency guaranteed portion of a loan is sold to a holder. This action is necessary because the rule is not sufficiently clear that the use of loan funds for purposes not approved by the Agency is a reason to find the guarantee unenforceable regardless of whether the guaranteed portion of the loan has been sold to a holder. This action ensures the Agency has sufficient rights for reimbursement when an Agency guaranteed portion of the loan is sold to a holder.

**DATES:** This rule will become effective September 2, 2011 without further action unless the Agency receives significant written adverse comments or written notice of intent to submit adverse comments on or before August 18, 2011. If the Agency receives significant adverse comments or notices, the Agency will publish a timely notice in the **Federal Register** withdrawing the rule.

Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Written comments must be received by the Agency or carry a

postmark or equivalent no later than August 18, 2011.

**ADDRESSES:** You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Lewis, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3224, Washington, DC 20250-3221; e-mail: [david.lewis@wdc.usda.gov](mailto:david.lewis@wdc.usda.gov); telephone (202) 690-0797.

#### SUPPLEMENTARY INFORMATION:

##### Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

##### Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to the Business and Industry Guaranteed Loan Program is 10.782.

##### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development 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 (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an

Environmental Impact Statement is not required.

#### Executive Order 12372, Intergovernmental Consultation

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

#### Executive Order 12988, Civil Justice

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (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 to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

#### Executive Order 13132, Federalism

The policies contained in this 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 final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

#### Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. 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.

#### 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 or the

private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (202) 690-1681 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

**Paperwork Reduction Act**

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

**E-Government Act Compliance**

Rural Development 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 other purposes.

**I. Background**

The Agency reviewed 7 CFR 4279.72, which is composed of three paragraphs, the first two of which are pertinent.

Section 4279.72(a) lays out the conditions under which a guarantee is not enforceable. The text separately identifies four such conditions:

1. In cases of fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones;
2. To the extent that any loss is occasioned by a provision for interest on interest;
3. To the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time

at which the Agency acquires knowledge thereof; and

4. To the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment.

Section 4279.72(b) discusses rights and liabilities when a guaranteed portion of a loan is sold to a holder. It states, in part, that the lender will be liable for payments made by USDA to any holder in the event of "material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation." Section 4279.72(b) does not, however, refer to the other conditions listed in § 4279.72(a).

The Agency believes the lender's responsibility to reimburse the Agency for the improper activity should not be dependent upon whether the lender or holder owns the loan guarantee. However, the Agency is concerned that this policy is not sufficiently clear in the regulation. Therefore, the Agency is clarifying its position on this matter. The regulatory change is not retroactive nor does it affect the rights of current holders. However, the Agency recognizes that the issue should be clarified in the regulation. Accordingly, the Agency is making the changes in this direct final rule.

**II. Discussion of Change**

Section 4279.72(a) addresses the lender's coverage under the loan note guarantee. It also identifies those instances when the conduct of a holder may jeopardize their interest in the loan note guarantee. Section 4279.72(b) addresses the holder's coverage under the loan note guarantee. The change being made by this rule clarifies that having a holder purchase part of the loan note guarantee does not increase the coverage provided to the lender under the loan note guarantee. Therefore, the Agency will require the lender to reimburse it for any amount it pays to a holder that would not have been paid to a lender under § 4279.72(a).

The Agency is revising § 4279.72(b) to address the situation discussed in the "Background" section and similar situations.

**List of Subjects in 7 CFR Part 4279**

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

For the reasons set forth in the preamble, chapter XLII, title 7 of the Code of Federal Regulations is amended as follows:

**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

**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. 1932(a); and 7 U.S.C. 1989.

**Subpart A—General**

■ 2. Amend § 4279.72 by revising the last sentence of paragraph (b) to read as follows:

**§ 4279.72 Conditions of guarantee.**

\* \* \* \* \*

(b) \* \* \* The lender will reimburse the Agency for any payments the Agency makes to a holder of lender's guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

\* \* \* \* \*

Dated: July 12, 2011.

**Dallas Tonsager,**

*Under Secretary, Rural Development.*

[FR Doc. 2011-18010 Filed 7-18-11; 8:45 am]

**BILLING CODE 3410-XY-P**

**FARM CREDIT ADMINISTRATION**

**12 CFR Part 614**

**RIN 3052-AC62**

**Loan Policies and Operations; Loan Purchases From FDIC; Effective Date**

**AGENCY:** Farm Credit Administration.  
**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule under part 614 on May 25, 2011 (76 FR 30246) amending our regulations on loan policies and operations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 12, 2011.

**DATES:** *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 614 published on May 25, 2011 (76 FR 30246) is effective July 12, 2011.