

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Services

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Part 1980

### RIN 0575-AC90

### Single Family Housing Guaranteed Loan Program

**AGENCY:** Rural Housing Service, Rural Business-Cooperative Services, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Department of Agricultural (USDA), Rural Housing Service (RHS) proposes a change to its Single Family Housing Guaranteed Loan Program (SFHGLP) regulation. The proposed action is taken to implement authorities granted the Secretary of the USDA, in Sec. 102 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212, July 29, 2010) to collect from the lender an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan. The intent of the annual fee is to make the SFHGLP subsidy neutral when used in conjunction with the one-time guarantee fee, thus eliminating the need for taxpayer support of the program. For Fiscal Year (FY) 2012, an annual fee of 0.3 percent of the outstanding principal balance will be required in order that the SFHGLP may maintain subsidy neutrality. Beginning with all loans obligated on or after October 1, 2011, RHS proposes to charge an annual fee of 0.3 percent of the outstanding principal balance of the loan for the life of the loan.

**DATES:** Written or email comments on the proposed rule must be received on or before December 27, 2011.

**ADDRESSES:** You may submit comments on this proposed rule by any one of the following methods:

- *Email:* [comments@wdc.usda.gov](mailto:comments@wdc.usda.gov). Include "RIN No. 0575-AC90" in the subject line of the message.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments electronically.

- *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 Ave., 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:**

Cathy Glover, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, USDA Rural Development, Room 2250, STOP 0784, 1400 Independence Ave., SW., Washington, DC 20250, *Telephone:* (202) 720-1452, *Email:* [cathy.glover@wdc.usda.gov](mailto:cathy.glover@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Classification**

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect 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 part 11 must be exhausted.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency 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 the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed 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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency 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, Public Law 91-190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

**Federalism—Executive Order 13132**

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

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determinations of program benefits for guarantees of loans made to individuals.

### Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

### Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

### Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The assigned OMB control number is 0575-AC83.

### E-Government Act Compliance

The Rural Housing Service 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

As a result of Public Law 111-212, "Supplemental Appropriations Act, 2010," enacted on July 29, 2010, Section 502 (h)(8) of the Housing Act of 1949 (42 U.S.C. 1472 (h) (8)), was amended to read as follows: "(8) Fees.— Notwithstanding paragraph (14) (D), with respect to a guaranteed loan issued or modified under this subsection, the Secretary may collect from the lender— "(A) at the time of issuance of the guarantee or modification, a fee not to exceed 3.5 percent of the principal obligation of the loan; and "(B) an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan."

The annual fee provision is applicable to purchase and refinance loan transactions. The intent of the annual fee is to make the SFHGLP subsidy neutral, thus eliminating the need for taxpayer support of the program. RHS has determined that in order for the SFHGLP to maintain subsidy neutrality, beginning with loans obligated on or after October 1, 2011, an annual fee of 0.3 percent will be charged on the outstanding principal balance of the loan for the life of the loan.

RHS currently collects an upfront guarantee fee of 3.5 percent for purchase loans, and 1 percent for refinance loan transactions. The lender collects the upfront guarantee fee from the borrower at the time of loan closing. The borrower either pays the upfront guarantee fee from personal funds, or the fee may be included in the guaranteed loan amount. The proposed annual fee of 0.3 percent will be collected in addition to the upfront guarantee fee.

RHS operational systems currently do not accommodate the annual fee provision. RHS will take steps necessary to enhance the operational systems in the coming months so that an annual fee of 0.3 percent may be collected on all loans obligated on or after October 1, 2011. RHS is aware that lenders will need time to enhance their systems, and intends to work closely with lenders and service bureaus to ensure they can support the proposed annual fee requirement in the shortest possible timeframe. Supporting documentations for servicers as well as training materials for loan originators and servicers will be developed by RHS prior to implementation of the annual fee.

RHS proposes to structure the annual fee as follows:

(1) Determining the Annual Fee: The annual fee will be calculated based on the guaranteed loan amount and on the average annual scheduled unpaid principal balance for the life of the loan. The fee will be calculated when the loan is made and every 12 months thereafter, until the loan is paid in full or no longer outstanding and the guarantee is cancelled or expired. For example, to determine the annual fee for a \$100,000 loan (guaranteed amount), 6% interest rate, 30 year term, calculate as follows:

a. *Step 1:* Compute the average annual scheduled unpaid principal balance (UPB). The average annual scheduled UPB for year 1, for a \$100,000 loan = \$99,443.244 is \$99,443.24 (*standard 5-3-3 rounding*)

b. *Step 2:* Compute Annual Fee based off the average annual UPB. Based on an annual fee of .3%, \$99,443.24 x .3% = \$298.33 (*rounded up to the next cent*)

c. *Step 3:* Compute monthly escrow required for annual fee. \$298.33/12 = \$24.87 (*rounded up to the next cent*).

#### (2) Annual Fee Billing

a. Lenders will be billed retroactively for a 12 month period, commencing on the first anniversary of the loan and each anniversary thereafter. For example, if the loan closes on November 1, 2011, the lender will be billed for the initial fee on December 1, 2012.

b. The annual fee payment will be due to RHS by the 15th calendar day after each anniversary of the loan. Using the example above, the initial annual fee will be due to RHS by no later than December 15, 2012.

c. If the fee is not paid by the due date, RHS will assess a late fee of 4 percent of the billed amount on the 16th calendar day after the bill is due. If the annual fee for a loan is still unpaid after 30 days, RHS may assess additional late fees on the delinquent fee amount.

d. Although, RHS will collect the fee annually, lenders may establish an escrow account to collect the fee from the borrower on a monthly basis.

(3) The Annual Fee will be collected through Pay.Gov as follows:

a. Fully web-based for lenders with 3,000 or less loans; and

b. An overnight matching batch process for lenders with greater than 3,000 loans.

### List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

For the reason stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 1980—GENERAL

(1) The authority citation for part 1980 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

### Subpart D—Rural Housing Loans

(2) Section 1980.323 is revised to read as follows:

#### § 1980.323 Guarantee loan fees.

The Lender will pay an up-front guarantee fee, and will also be charged an annual fee. The amount of the up-front guarantee fee and annual fee will be calculated based on the figure identified in exhibit K of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Development office). The nonrefundable fees may be passed on to the borrower.

(a) *Up-front guarantee fee.* The amount of the up-front guarantee fee is determined by multiplying the appropriate figure in RD Instruction 440.1, Exhibit K, times 90 percent of the principal amount of the loan.

(b) *Annual fee.* The annual fee will be based on the average annual scheduled unpaid principal balance of the guaranteed loan amount. The fee percentage can be found in RD Instruction 440.1, Exhibit K. The Agency will assess a late fee for annual fees not timely paid.

\* \* \* \* \*

Dated: July 19, 2011.

**Dallas Tonsanger,**

*Under Secretary, Rural Development.*

Dated: August 2, 2011.

**Michael Scuse,**

*Acting Under Secretary, Farm and Foreign Agriculture Services.*

[FR Doc. 2011-27945 Filed 10-27-11; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 8 CFR Part 100

#### 19 CFR Part 101

[Docket No. USCBP-2011-0032]

RIN 1651-AA90

### Opening of Boquillas Border Crossing and Update to the Class B Port of Entry Description

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking proposes to create a border crossing in Big Bend National Park to be called Boquillas. The Boquillas crossing would be situated between Presidio and Del Rio, Texas. U.S. Customs and Border Protection (CBP) and the National Park Service plan to partner on the construction of a joint use facility in Big Bend National Park where the border crossing would operate. This NPRM proposes to designate the Boquillas border crossing as a "Customs station" for customs purposes and a Class B port of entry for immigration purposes.

This NPRM also proposes to update the description of a Class B port of entry to reflect current border crossing documentation requirements.

**DATES:** Comments must be received on or before December 27, 2011.

**ADDRESSES:** You may submit comments identified by *docket number*, by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2011-0032.

- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Regulations and Rulings, Attention: Border Security Regulations Branch, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Colleen Manaher, CBP Office of Field Operations, telephone (202) 344-3003.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance to CBP will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

##### **Background**

The term "port of entry" is used in the Code of Federal Regulations (CFR) in title 19 for customs purposes and in title 8 for immigration purposes.

Concerning customs purposes, CBP operates Customs ports of entry,<sup>1</sup> service ports,<sup>2</sup> and "Customs stations"<sup>3</sup> listed and described in part 101 of the CBP regulations (19 CFR part 101). Section 101.3 of the CBP regulations (19 CFR 101.3) lists the Customs ports of entry and service ports. Section 101.4 of the CBP regulations (19 CFR 101.4) lists the "Customs stations" and the supervisory port of entry for each station. In addition, for immigration purposes, 8 CFR 100.4(a) lists ports of entry for aliens arriving by vessel and land transportation. These ports are listed according to location by districts and are designated as Class A, B, or C, which designates which aliens may use the port. As explained in detail in the section of this document entitled "Proposed Revision of Class B Port of Entry Description," we are proposing to revise the description of a Class B port of entry so that it conforms to recent changes to documentary requirements.<sup>4</sup>

This notice of proposed rulemaking (NPRM) proposes to establish a border crossing in Big Bend National Park where U.S. citizens and certain aliens would be able to cross into the United States. Before 2002, a border crossing, called Boquillas, was open in the national park. The new border crossing would be located at the site of the historic crossing and would also be called the Boquillas border crossing. This NPRM proposes to designate the Boquillas border crossing as a Class B port of entry and a "Customs station" under the supervisory port of entry of Presidio, Texas. Presidio, Texas is a

<sup>1</sup> A port of entry is defined in 19 CFR 101.1 as "any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws." The authority of the Secretary of the Treasury referred to in this definition has been transferred to the Secretary of Homeland Security. Sections 403(l) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107-296, 6 U.S.C. 203(l), 211) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security.

<sup>2</sup> A service port is defined in 19 CFR 101.1 as "a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification."

<sup>3</sup> A "Customs station" is defined in 19 CFR 101.1 as "any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of Customs and navigation laws of the United States."

<sup>4</sup> Class A ports of entry are those designated for all aliens. Class C ports of entry are designated only for aliens arriving as crewmen, as the term is defined by the Immigration and Nationality Act with respect to vessels.