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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279

[Docket No. RBS-20-BUSINESS- 0016]

RIN 0570–AB07

Guaranteed Loanmaking and Servicing Regulations

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Rural Business-Cooperative Service (RBCS), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing an interim final rule to update the Business and Industry (B&I) Guaranteed Loan Program to allow flexibility to obligate federal funds for guaranteed loans pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in response to the national COVID-19 Public Health Emergency. The RBCS is responsible for administering the B&I Guaranteed Loan Program.

DATES: *Effective Date:* **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

Applicability date: This interim final rule applies to applications submitted under the B&I CARES Act Guaranteed Loan Program through **[INSERT DATE 30 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER] or until funds made available for this purpose are expended.

Comment Date: This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These comments must be submitted and received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The RBCS will consider these comments and the need for making any revisions as a result of these comments.

ADDRESSES: Comments may be submitted on this interim final rule using the following method:

- Electronically using the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and in the “Search Documents” box, enter the Docket Number RBS-20-BUSINESS-0016 or the RIN # (0570–AB07), and click the “Search” button. To submit a comment, choose the “Comment Now!” button. 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 under the “Help” tab at the top of the Home page. In the Docket ID column, select RBS-20-BUSINESS-0016 to submit or view public comments and to view supporting and related materials available electronically. 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 “User Tips” link.

Other Information: Additional information about Rural Development and its programs is available on the internet at <http://www.rd.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mark Brodziski, Acting Administrator, Rural Business and Cooperative Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop Washington, DC 20250-3221; e-mail: mark.brodziski@usda.gov; telephone (202) 205-0903.

SUPPLEMENTARY INFORMATION:

Executive Summary

Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID–19 emergency, many businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public’s exposure to the virus. These measures, as well as advice to physically social distance from other people and to stay at home or “shelter in place,” have resulted in a dramatic negative impact on the livelihood of many Americans and, in turn, negatively impacted the national economy.

In order to provide some financial relief to American families, on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the

Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Rural Business Cooperative Service (RBCS) received funding and authority through Division B, Title I of the CARES Act to provide for additional funds for use under the Business & Industry (B&I) Guaranteed Loan Program.

Rural Development is a mission area within the USDA comprised of the Rural Utilities Service, Rural Housing Service and RBCS. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, access to capital, and technical support that enables rural communities to prosper. To achieve its mission, Rural Development provides financial support through more than 40 programs including direct loans, grants, loan guarantees, and technical assistance to help improve the quality of life and provide the foundation for economic development in rural areas.

The B&I Guaranteed Loan Program was authorized by the Rural Development Act of 1972. The loans are made by private lenders to rural businesses for the purpose of creating new businesses, expanding existing businesses, and for other purposes that create employment opportunities in rural America. Businesses in rural areas are eligible for this program. Rural areas, as defined at 7 CFR 4279.108(c), are any area of a State other than a city or town that has a population of greater than 50,000 inhabitants and any urbanized area contiguous and adjacent to such a city or town. The types of borrowers that are served by the B&I Guaranteed Loan Program are cooperative organizations, corporations, partnerships, or other legal entities organized and operated on a profit or nonprofit basis; Indian tribes on a Federal or State reservation or other federally recognized tribal group; public bodies; or individuals, provided the borrower is engaged in, or proposing to engage in, a business. Loans can be made for a variety of

purposes, including business acquisition, expansion or improvement; purchase of real estate, machinery and equipment, or supplies; limited debt refinancing; and working capital. The rate and term of the loan is negotiated between the business and the lender.

Purpose of the Regulatory Action

The Rural Business Cooperative Service (RBCS) received funding and authority through Division B, Title I of the CARES Act to provide for additional funds for use under the Business & Industry (B&I) Guaranteed Loan Program. In accordance with the CARES Act, the purpose of the additional B&I funding is to prevent, prepare for and respond to the effects of the COVID-19 pandemic. It is the Agency's intent that guaranteed loan funds will be used for working capital loan purposes to support business operations and facilities in rural areas. This funding will assist rural businesses that are impacted due to the economic impacts of the COVID-19 emergency. This critical funding will allow rural businesses to have access to funding for operating expenses to allow them to sustain operations. This rule will supplement the current B&I Guaranteed Loan Program as implemented in 7 CFR part 4279 – Guaranteed Loan Making and 7 CFR part 4287 – Servicing, with the new B&I CARES Act Guaranteed Loan Program (B&I CARES Act Program).

Beneficiaries of the B&I CARES Act Program provision

Currently, with the COVID-19 emergency, there is a lack of access to much needed capital to support business operations and facilities. This holds true particularly for businesses in rural areas. Shelter in place requirements and restrictions on businesses reducing operations to only

essential services are having an adverse impact on rural businesses and their capacities to fund operating expenses.

Input and feedback to the Agency from businesses and business associations, bankers and bank associations, and other rural stakeholders highlight a growing concern that the erosion of working capital will require businesses to seek funding for working capital to sustain businesses during the COVID-19 emergency and to restart and ramp up business operations once the COVID-19 emergency is resolved. The National Rural Lenders Association, Rural Lenders Roundtable, ICBA Agriculture and Rural Lenders, and ABA Agriculture and Rural Banking committee reached out to the Agency to emphasize that many of the rural business borrowers will be unable to meet lenders' requirements for working capital loans without the support of a government guarantee. Rural businesses have limited options to access credit due to the limited number of banks serving rural communities. The B&I Guaranteed Loan program enables local lenders to serve rural businesses as evidenced by the fact that over 75 percent of the lenders in the B&I loan portfolio are local community banks financing local businesses.

In addition to agricultural lenders, agribusiness and agricultural producer stakeholders have reached out to the Agency to emphasize the adverse impacts of the COVID-19 emergency to agricultural producers and agribusinesses, the financial needs of agricultural producers and the lack of assistance available to agricultural producers that are too large to qualify for SBA programs or USDA Farm Service Agency (FSA) guaranteed loan programs. The B&I CARES Act Program will also serve farmers, farm labor, and agribusiness. The eligibility requirements of the B&I Guaranteed Loan Program focus on the use of loan funds and not on the borrowers' primary industry classification, such as agricultural production. Loan proceeds of B&I guaranteed loans cannot generally be used for costs related to agricultural production; however,

the B&I CARES Act Program will expand eligible use of loan funds to include loans to agricultural producers whose financial needs are greater than loan amounts available under FSA guaranteed loans or are otherwise ineligible for FSA guaranteed loans. Expansion of the program to larger agricultural producers, currently ineligible under B&I, could result in high utilization of available program funding by agricultural producers and limit availability of funding to other rural businesses. To enable large agricultural producers and rural businesses of all industry sectors access to the program, the aggregate total amount of loans for agricultural production will initially be limited to 50 percent of the total amount of program level for the B&I CARES Act Program. This restriction is intended to provide eligible rural businesses of all industry sectors the flexibility they need to use the program effectively. The Agency may publish future notices in the Federal Register revising the limitation of the amount of funding made available for loans for agricultural production to align with the demand for these loans. Agribusinesses (non-agricultural production businesses such as supply services, marketing, processing, and other services) are eligible and include agribusinesses owned by agricultural producers. Certain food processing and distribution businesses located in urban areas may be eligible if certain requirements are met including the processing of agricultural commodities whereby the food sold is grown locally or regionally.

The New B&I CARES Act Guaranteed Loan Program

The B&I Guaranteed Loan program, as funded by the CARES ACT, is similar, yet different from other Federal Government programs. The B&I CARES Act Program will focus assistance to rural businesses, including agribusinesses and agricultural producers, with financial needs

unmet by other Federal Government programs to prevent, prepare for, and respond to the coronavirus pandemic. The Small Business Administration (SBA) Economic Injury Disaster Loans (EIDL) provides working capital to help small businesses survive until normal operations resume after a disaster. EIDL can provide up to \$2 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. EIDL assistance is available only to small businesses when SBA determines they are unable to obtain credit elsewhere. Currently, access to the EIDL program is further limited and SBA is accepting new EIDL and EIDL Advance applications on a limited basis only to provide relief to U.S. agricultural businesses. Although loan purposes under the B&I CARES Act Program may overlap with loan purposes of EIDL, the B&I CARES Act Program will focus assistance to rural businesses that are ineligible to submit new EIDL applications or that are too large or otherwise not eligible for EIDL or have financial needs due to the coronavirus pandemic greater than EIDL assistance.

SBA also administers the Paycheck Protection Program (PPP). PPP is designed to provide a direct incentive for small businesses to keep their employees on the payroll. PPP loans are eligible for forgiveness of up to the full principal amount of the loans if employee and compensation levels are maintained or restored to full-time employment by June 30, 2020 and the loan proceeds are used for payroll, rent, mortgage interest, or utilities. At least 75% of the forgiven amount must have been used for certain qualifying payroll costs. The guaranteed loans funded by the B&I CARES Act Program will be for working capital loan purposes to support business operations and facilities in rural areas. While loan purposes under the B&I CARES Act Program may overlap with some of the purposes of the SBA PPP, the B&I CARES Act Program guaranteed loans will cover a broader range of typical business operating expenses and will not

be focused on payroll costs. The B&I CARES Act Program will include funding for inventory, raw materials, supplies, and critical operating expenses for rural manufacturing businesses, including purposes that were not included in the allowable uses of PPP funds.

The B&I CARES Act guaranteed loan funds may be used by eligible businesses to finance business operating expenses incurred for a period up to 12 months, whereas the PPP maximum loan amount is for a period of 2.5 months and the amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period. B&I CARES Act Program guaranteed loan funds may be used by rural businesses that require additional working capital to sustain and ramp up business operations once the emergency is resolved. The maximum B&I CARES Act Program loan amount a business may receive will be reduced by the amount of any SBA EIDL or PPP loans and other Federal emergency assistance they receive in order to prevent duplication of program services.

The B&I CARES Act Program guaranteed loan will be a 90% guarantee and require the lender to retain a percentage of the loan and thus hold some of the risk. The loans do not include terms for loan forgiveness and require 100% repayment by the borrower. The loans must be secured with business collateral and may require personal guarantees.

A bank or lender that is not already a participating lender in SBA's guaranteed business loan program (7(a) loan program) must be approved or authorized by the SBA. All lenders that are subject to supervision and credit exam by a Federal or State agency are automatically eligible to participate in the B&I program. Non-supervised lenders may apply to the Agency for approval as an eligible lender.

There are also differences in borrower eligibility requirements between this B&I CARES Act Program and SBA PPP. The PPP is limited to certain businesses and non-profit enterprises qualifying by size of business, mainly based on the number of employees. SBA does not have any geographic restrictions or preferences. The B&I program is available only to businesses located in rural areas as defined in the B&I statute, with limited exceptions. Businesses with multiple locations, rural and non-rural, are eligible when the use of loan funds is to support business facilities and operations in eligible rural areas. The program does not have any restriction on the size of business or business ownership structures.

***Summary of Modifications to the B&I Program Regulation to provide for the B&I CARES Act
Guaranteed Loans Program***

The B&I CARES Act Program will expand eligible use of loan funds to include loans for agricultural production when the borrower's financial needs are greater than loan amounts available under FSA guaranteed loans or is otherwise ineligible for FSA guaranteed loans.

All the standard requirements of commercial loan applications may further restrict rural businesses' ability to access credit. For example, access to appraisal services and accounting and financial services may be limited due to social distancing and business service restrictions. Balancing credit underwriting standards with businesses' needs to access capital, the Agency is modifying its requirements for certain loan application information for the B&I CARES Act Guaranteed Loan Program. The Agency is providing more flexibility to lenders by accepting appraisals completed within the last two years (rather than a current year appraisal), and updated appraisals (rather than completely new appraisals). The Agency is also increasing the threshold

of the loan amount which triggers when appraisals are required for loans in order to align with guidance by FDIC and other credit supervision agencies. The Agency will not require discounting the value of collateral for working capital loans but will continue to require security for loans and will continue limiting the amount of the loan so that it does not exceed the market value of collateral.

The Agency is also providing more flexibility to lenders to accept borrowers' tax records in lieu of obtaining historical financial statements to document a borrower's financial history and loan repayment ability. Use of tax records is standard in commercial lending practices. Agricultural producers' financial records must meet the industry's standard accounting practices.

Loss of income and ongoing fixed operating expenses may deplete a business's working capital and attempts by a business to finance working capital with additional debt will decrease the equity of a business. The Agency is providing borrowers more flexibility in the form of alternatives to meet the B&I requirement of 10% investment in the business by the borrower. Businesses currently facing financial distress will need time to recover. Repayment requirements of additional debt may further distress and lengthen their financial recovery period. To ease a borrower's capital requirement, the B&I CARES Act Program utilizes existing authorities for deferral of principal and interest payments in the first three years from loan origination and extends the maximum repayment term for working capital loans from 7 years to 10 years. Interest shall be paid at least annually from the date of the note.

In summary, the Agency considered the type of enhancements that participating lenders would need to be able to generate quality loans and approve and disburse loan funds in a timely and efficient manner in these critical times. The Agency focused on adjusting several requirements under the current B&I program which would enable lenders greater flexibility in

structuring loans while taking into consideration the borrowers' current financial condition and capacity, but also assuring that such adjustments can be made without compromising Agency underwriting standards. For the B&I CARES Act Program guaranteed loans, the Agency made program adjustments to the following: (a) maximum percentage of guarantee; (b) equity evaluation; (c) appraisal evaluations; (d), collateral evaluation; and (e) maximum repayment terms for working capital loans. The Agency evaluated guarantee fee and annual renewal fee percentages, components of the credit subsidy scoring, necessary to achieve a balance between fee amounts adequate to decrease default risk and fee amounts at reasonable levels to applicants facing financial distress. The Agency intends fees to be reasonable and in an amount adequate to support program levels to make the program available to as many recipients as possible.

As a result of these considerations and the funding purposes outlined in the CARES Act, the Agency decided to offer the following under the B&I CARES Act Program: 1) 90 percent guarantees to all B&I CARES Act Program funded loans, 2) 2 percent guarantee fee; 3) acceptance of appraisals completed within two years of the date of the application; 4) no discounting of collateral for working capital loans; and 5) extension of the maximum term for working capital loans to 10 years.

Changes to the B&I Guaranteed Loan Program regulations apply only to the loans funded under the CARES Act and do not apply to loans funded under the Appropriations Act of 2020 or any other appropriations other than the CARES Act.

Executive Order 12866, Regulatory Planning and Review

This interim final rule has been reviewed by the Office of Management and Budget under Executive Order 12866 and determined to be economically significant for the purposes of

Executive Orders 12866 and, is considered a major rule under the Congressional Review Act. The Executive Order defines an “economically significant regulatory action” as one that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this EO. This interim rule was determined to be economically significant because the changes to the B&I Guaranteed Loan Program regulations are estimated to have an impact on the economy of more than \$100 million.

RBCS, however, is proceeding under the emergency provision of Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. RBCS is publishing this interim final rule to codify new funding purposes consistent with the purposes of the CARES Act—to prevent, prepare for and respond to the COVID—19 emergency. To the extent practicable under the circumstances related to the COVID—19 emergency, RBCS has met, or attempted to meet the provisions of Section 6(a)(3)(B) and (C) of the Executive Order. The Agency has determined that the most effective use of these program funds to meet this purpose is to primarily focus on funding working capital loans to support business operations and facilities in rural areas. The new provisions of the regulation will ensure the consistent and streamlined implementation by the Agency of these additional flexibilities to respond to the COVID-19 Emergency.

Administrative Procedure Act Statement

The CARES Act provides for additional funds to the Agency under the B&I Guaranteed Loan Program to prevent, prepare for and respond to the coronavirus. The Agency is issuing this interim rule without advance rulemaking or public comment. The Administrative Procedure Act of 1946, as amended (5 U.S.C. § 553) (APA), has several exemptions to rulemaking requirements. Section 553(b)(3)(B) of the APA authorizes agencies to dispense with rulemaking notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest” Additionally, agencies are authorized to dispense with the 30-day delayed effective date requirement as otherwise provided by the agency for good cause found and published with the rule by Section 553(d) of the same act. Under these sections, USDA has determined, upon finding good cause, that making these funds available as authorized in Division B, Title I of the CARES Act as expeditiously as possible is in the public interest in order to address the national COVID-19 Public Health Emergency. Therefore, the Agency has determined that withholding these funds to provide for public notice and comment would unduly delay the provision of benefits and be contrary to the public interest in response to the national COVID-19 Public Health Emergency. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. RBCS will consider these comments and the need for making any revisions to this rule or to the B&I CARES Act Program as a result of these comments.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801), the Office of Information and Regulatory Affairs of the Office of Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2) because this action will result in an annual effect on the economy of \$100,000,000 or more. However, notwithstanding 5 U.S.C. 801, section 808(2) of the Congressional Review Act (5 USC 808(2)) permits that if any rule which an agency for good cause finds that not issuing the notice and public procedure thereon would be impracticable, unnecessary, or contrary to the public interest, shall take effect at such in the time that the Agency determines. USDA has determined, under section 808(2), that making these funds available through the issuance of this interim rule, as authorized in Division B, Title I of the CARES Act, supplements existing authority implemented through regulatory authority in 7 CFR 4279, Subpart A and B, and 7 CFR 4287, Subpart B, and find good cause that notice and public procedure would be impracticable and contrary to the public interest, in light of the national COVID-19 Public Health Emergency. Such finding is made because withholding these funds would unduly delay the provision of emergency benefits under the CARES Act, which Congress intended to provide expeditious relief to address the current economic conditions arising from the COVID-19 emergency. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. RBCS will consider these comments and the need for making any revisions to this rule or the B&I CARES Act Program as a result of these comments.

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this interim rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that conflict with this interim rule will be preempted. No retroactive effect will be given to this interim 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.

Executive Order 12372, Intergovernmental Review

B&I guaranteed loans are subject to the Provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. The Agency will conduct intergovernmental consultation in accordance with 2 CFR Part 415, Subpart C.

Executive Order 13132, Federalism

The policies contained in this interim final 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 interim final rule impose substantial direct compliance costs on State and local governments. Therefore, the Agency has determined that consultation with the States is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This interim final rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Rural Development has assessed the impact of this interim final rule on Indian tribes and determined that this final rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe would like to engage in consultation with Rural Development on this rule, please contact Rural Development’s Native American Coordinator at (720) 544–2911 or AIAN@wdc.usda.gov.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would

lessen the economic effect of the rule on small entities. The RFA defines a “small entity” as (1) a proprietary firm meeting the size standards of the SBA; (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3), Except for such small government jurisdictions, neither State nor local governments are “small entities.” Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the Federal Register at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the Federal Register at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things, the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, as authorized by Section 553(b)(3)(B) and Section 553(d) of the APA as well as supported in the federal agency source book published by the Small Business Administration’s Office of Advocacy, “*A Guide to for Government Agencies, How to Comply with the Regulatory Flexibility*, Ch.1. p.9., the Agency is not required to conduct a regulatory flexibility analysis.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection activities associated with this interim final rule are covered under the Business and Industry (B&I) Guaranteed Loan Program, OMB Docket Number 0570-0069.

E-Government Act Compliance

The RBCS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

National Environmental Policy Act Certification

This interim final rule has been reviewed in accordance with 7 CFR part 1970, “Environmental Policies and Procedures.” The Agency has determined that this is not 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.), an Environmental Impact Statement is not required.

Catalog of Federal Domestic Assistance

The program described by this interim final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.768 –Business and Industry Guaranteed Loan Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800 and at [https:// www.cfda.gov](https://www.cfda.gov).

Unfunded Mandates

This interim final rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and Tribal governments or the private sector. Therefore, this interim final rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Civil Rights Impact Analysis

Rural Development has reviewed this interim final rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts this interim final rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the interim final rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this interim final rule will neither adversely nor disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian

tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter

to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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List of Subjects for 7 CFR Parts 4279

Loan programs-business, Reporting and recordkeeping requirements, Rural areas.

Accordingly, for reasons set forth in the preamble, 7 CFR part 4279 is amended as set forth below:

PART 4279—GUARANTEED LOANMAKING

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

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989; and Public Law 116–136, Division B, Title I.

Subpart A—General

1. Amend §4279.1 by revising paragraph (a) as follows:

§4279.1 Introduction.

(a) This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. This subpart is supplemented by subpart B of this part, which contains loan processing regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations. This

subpart also contains regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID–19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in §4279.190 of this subpart.

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2. Amend §4279.101 by revising paragraph (a) to read as follows:

§4279.101 Introduction.

(a) *Content.* This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations. This subpart also contains regulations for Business and Industry loans under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) to provide B&I guarantees for loans needed as a result of the Coronavirus Disease 2019 (COVID–19) pandemic for working capital loan purposes to support business operations and facilities in rural areas (B&I CARES Act Program Loans). Some of the requirements of this subpart are waived or altered for B&I CARES Act Program Loans. The waivers and alterations are provided in §4279.190 of this subpart.

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3. Add §4279.190 to Subpart B to read as follows:

§4279.190 Business and Industry national COVID-19 Public Health Emergency Loans.

(a) *Introduction.* This section contains regulations for the Business and Industry National COVID-19 Public Health Emergency loan program (B&I CARES Act Program Loans). The purpose of the program is to provide loan guarantees under the authority of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136). These B&I CARES Act Program Loans cover costs to prevent, prepare for and respond to the coronavirus. Consistent with the purposes of the CARES Act, the Agency has determined that the most effective use of these program funds is to support the cost of guaranteed loans to rural businesses to respond to the coronavirus. No B&I CARES Act Program Loan guarantee will be approved after September 30, 2021. All provisions of Subparts A and B of Part 4279 and Subpart A of Part 4287 of this chapter apply to B&I CARES Act Program Loans, except as provided in this section. All forms used in connection with a B&I CARES Act Program Loan will be those used with other Business and Industry (B&I) loans, except as provided in this section.

(b) *Eligible borrowers.* Section 4279.108 of this subpart applies to B&I CARES Act Program Loans. In addition, borrowers must have been in operation on February 15, 2020.

(c) *Eligible use of funds.* (1) The purpose of any B&I CARES Act Program Loan must be to cover costs to prevent, prepare for, and respond to the coronavirus pandemic in accordance with paragraph (a) of this section. B&I CARES Act Program Loans should not exceed the amount needed to overcome the financial distress caused by the COVID-19 National Emergency.

(2) Notwithstanding the provisions of § 4279.113, B&I CARES Act Program guaranteed loans will be limited to loans for working capital loan purposes in accordance with paragraph (c)(3) of this section. Loan proceeds may be used only to support facilities and

business operations in rural areas and the Borrower must have been in operation on February 15, 2020. Loan proceeds must be disbursed through multiple draws on an as-needed monthly basis.

(3) Eligible Working Capital uses of B&I CARES Act Program Loan funds are limited to:

(i) Wages, salaries, sales commissions to employees, group healthcare benefits, and other employee benefits;

(ii) Administrative expenses and administrative service contracts;

(iii) Property insurance, hazard insurance, and other business insurance;

(iv) Principal and interest payments excluding owner/stockholder debt and related-party debts;

(v) Rent, payments on leases, and routine maintenance;

(vi) Utilities;

(vii) Inventory, feed, seed, fertilizer and chemicals, livestock (excluding livestock for breeding) and supplies;

(viii) Marketing, shipping, and other expenses incurred through normal business operations or such additional expenses due to the national COVID-19 Public Health Emergency;

(ix) Taxes; and

(x) Loan costs and essential loan-related expenses.

(4) *Ineligible purposes.* Notwithstanding the provisions of § 4279.113, the following purposes are ineligible for B&I CARES Act Program guaranteed loans:

(i) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization;

(ii) Business acquisitions;

(iii) Leasehold improvements;

(iv) Constructing or equipping facilities;

(v) Purchase of machinery and equipment; and

(vi) Debt refinancing unless such debt refinancing is for debts incurred subsequent to February 15, 2020 for eligible purposes listed in paragraph (c)(3) of this section.

(5) *Agricultural production.* The provisions of § 4279.113(q) do not apply to B&I CARES Act Program Loans. Loans for working capital to support agricultural production, including independent agricultural production, is an eligible use of funds when the applicant's loan request exceeds the maximum loan available through Farm Service Agency (FSA) guaranteed loan programs or the applicant's request is otherwise ineligible for FSA loans.

(d) *Loan amount limits.* (1) The provisions of § 4279.119(a) do not apply to B&I CARES Act Program Loans. The total amount of B&I and B&I CARES Act Program Loans to one borrower (including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing B&I guaranteed loans, and the new loan request) cannot exceed \$25 million.

(2) The amount of the B&I CARES Act Program Loan shall be based on a cash flow analysis and must not be greater than the amount needed to cure problems caused by the COVID-19 emergency so that the business is reestablished on a successful basis. Losses and

business operating expenses that were adequately paid by insurance or by loans or grants from other sources will not be covered by B&I CARES Act Program Loans. B&I CARES Act Program Loans may be used to supplement insurance payments or assistance from other sources when the insurance coverage or other assistance is insufficient.

(3) The maximum loan amount of the B&I CARES Act Program Loan for working capital purposes may not exceed 12 times the borrower's total average monthly costs of eligible working capital loan purposes less the total amount of covered loans received under the provisions of section 1102 and Section 1110(a)(2) of the CARES Act and other Federal emergency assistance received.

(4) Borrowers receiving B&I CARES Act Program Loans in an amount less than the maximum loan amount in accordance with paragraph (d)(3) of this section, may apply for subsequent loans under this section up to an accumulative amount of B&I CARES Act Program Loans not to exceed the maximum loan amount.

(e) *Percentage of guarantee.* The provisions of § 4279.119(b) do not apply to B&I CARES Act Program Loans. The percentage of guarantee is 90 percent.

(f) *Guarantee fee.* The provisions of § 4279.120(a) do not apply to B&I CARES Act Program Loans. The guarantee fee for the B&I CARES Act Program Loans shall be two (2) percent. The guarantee fee is paid at the time the Loan Note Guarantee is issued and may be included as an eligible use of guaranteed loan proceeds. The amount of the guarantee fee is determined by multiplying the total loan amount by the guarantee fee rate by the percentage of guarantee.

(g) *Annual renewal fee.* Notwithstanding the provisions of § 4279.120(b), the annual renewal fee for B&I CARES Act Program Loans shall be one half of one (0.5) percent (50 basis points.)

(h) *Loan terms.* Notwithstanding the provisions of § 4279.126, the maximum allowable repayment term of loans for working capital purposes is 10 years. Loan repayment may defer principal payments or principal and interest payments for a period up to 12 months from loan closing and may extend deferral of principal payments up to a total of three years with a maximum repayment term of 10 years from the date of loan closing.

(i) *Credit quality.* Notwithstanding the provisions of §4279.131(a), the lender's evaluation of the borrower's repayment ability shall include an emphasis on the borrower's successful financial history and on the borrower's 2019 financial performance, present condition, and future viability.

(j) *Collateral.* B&I CARES Act Program loans must be adequately secured. Notwithstanding the provisions of §4279.131(b), loan-to-value discounting by the lender is not required for B&I CARES Act Program Loans for working capital purposes. The value of the collateral (fair market value) must be equal to or greater than the loan amount.

(k) *Capital/equity.* Notwithstanding the provisions of §4279.131(d), the business must meet one of the following requirements at loan closing:

(1) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement), or a maximum debt-to-balance sheet equity ratio of 9 to 1;

(2) A Borrower investment of equity or other funds into the project equal to 10 percent or more of total eligible project costs, (such investment may include grants or subordinated debt when subject to a standstill agreement); or

(3) The balance sheet equity includes owner-contributed capital of 10 percent or more of total fixed assets (net total fixed assets plus depreciation).

(l) *Appraisals.* Notwithstanding the provisions of § 4279.144, appraisals of real estate and chattel collateral are required when the amount of the loan exceeds \$1,000,000, unless the chattel is newly acquired equipment and the value is supported by a bill of sale. The Agency will accept appraisals older than 1 year but completed within 2 years of the application date. Lenders may provide an updated appraisal in lieu of a new complete appraisal when the original appraisal is more than 2 years old. All appraisals of real estate must be compliant with Uniform Standards of Professional Appraisal Practices (USPAP) requirements and reflect the current market value of the collateral as required by § 4279.144(a). To protect lenders, appraisers and Agency staff during the COVID-19 pandemic, an interior or on-site inspection of the collateral is not required if an assumption can be made by the appraiser on a reasonable basis or is based on previous inspections and condition reports completed by the lender or third party for the collateral.

(m) *Filing preapplications and applications.* (1) B&I CARES Act Program Loan borrowers with existing B&I loans do not need to resubmit their historical financial statements that have been previously submitted through routine loan servicing actions.

(2) Loans for working capital are classified as categorical exclusions for purposes of the Agency's environmental review policies and procedures in accordance with 7 CFR Part 1970. These actions normally do not require an applicant to submit environmental documentation with the application. However, based on the review of the project description, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist.

(3) Notwithstanding the provisions of § 4279.161(b), a draft loan agreement is not required, a business plan or feasibility study is not required, and lenders may substitute and rely on the borrower's tax returns when financial statements prepared in accordance with GAAP are

not available from the borrower. Agricultural producers' financial records must meet the industry's standard accounting practices.

(4) A lender or borrower may combine applications for a B&I CARES Act Program loan for working capital with an application for B&I appropriated fiscal year funds. The provisions of this section do not apply to applications for B&I appropriated fiscal year funds.

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