

*C. Executive Order 12988: Civil Justice Reform*

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

*D. Executive Order 13132: Federalism*

This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

*E. Unfunded Mandates Reform Act of 1995*

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

*F. Executive Order 12372: Intergovernmental Review of Federal Programs*

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Today's final rule does not significantly or uniquely affect "one or more Indian tribes, \* \* \* the relationship between the Federal Government and Indian tribes, or \* \* \* the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus, no further action is required under Executive Order 13175.

**List of Subjects in 7 CFR Part 2902**

Biobased products, Procurement.

■ For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

**CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE****PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT**

■ 1. The authority citation for part 2902 continues to read as follows:

**Authority:** 7 U.S.C. 8102.

■ 2. Revise paragraph (c) of § 2902.12 to read as follows:

**§ 2902.12 Water tank coatings.**

\* \* \* \* \*

(c) *Preference effective date.* No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water tank coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased water tank coatings.

■ 3. Revise paragraph (c) of § 2902.15 to read as follows:

**§ 2902.15 Bedding, bed linens, and towels.**

\* \* \* \* \*

(c) *Preference effective date.* No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bedding, bed linens, and towels. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bedding, bed linens, and towels.

Dated: November 14, 2006.

**Keith Collins,**

*Chief Economist, U.S. Department of Agriculture.*

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**BILLING CODE 3410–GL–P**

**DEPARTMENT OF AGRICULTURE****Rural Business-Cooperative Service****Rural Utilities Service****7 CFR Part 4279**

**RIN 0570–AA54**

**Business and Industry Guaranteed Loan Program**

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

**ACTION:** Final rule.

**SUMMARY:** Rural Business-Cooperative Service (RBS) amends its regulations for the Business and Industry (B&I) Guaranteed Loan Program by modifying the regulation regarding personal and corporate guarantors. This action will standardize the guarantor process. The Agency has created a guarantor form which will be used to obtain the personal or corporate guarantee of anyone owning greater than 20 percent interest in the borrower. The effect of this rule is to allow the Agency to use all remedies available to pursue collection from guarantors, including offset under the Debt Collection Improvement Act.

**DATES:** This rule is effective December 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** David Lewis, Business and Industry Loan Servicing Branch, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 690–0797, or by e-mail to [david.lewis@wdc.usda.gov](mailto:david.lewis@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:****Classification**

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

**Programs Affected**

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.768, Business and Industry Loans.

**Intergovernmental Review**

Business and Industry Guaranteed Loans are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation is required in the manner delineated in RD Instruction 1940–J and 7 CFR part 3015, subpart V, "Intergovernmental Review of Rural Development Programs and Activities."

**Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule, (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS 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.*, this regulation is a Categorical Exclusion. Loan applications will be reviewed individually to determine compliance with NEPA.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of, Pub. L. 104-4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), RBS has determined that this action would not have a significant economic impact on a substantial number of small entities. RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

### Executive Order 13132

It has been determined that, under Executive Order 13132, Federalism, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will

not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

### Executive Order 13175

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

### Paperwork Reduction Act

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

### E-Government Act Compliance

The Rural Business-Cooperative 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.

### Discussion

Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), the Agency is required to send the debt owed to the Government to the Department of the Treasury (Treasury) for collection. The DCIA covers both guaranteed and direct loans made by the Agency. Some ambiguity has existed regarding the Agency's ability to collect from guarantors of the borrower's loan. This rule will end that ambiguity by clearly making guarantors personally liable for any claims paid by the Government.

The Agency will establish more uniformity in the guarantees being obtained by lenders. This should result in the program being administered more consistently and the Government recovering more of its loss claims. Currently, guaranteed lenders prepare non-uniform, personal, or corporate guarantees. When there is a loss on the guaranteed loan, the lender pursues these guarantees with mixed recovery results. By implementing this rule, the Agency will treat all guarantors consistently, collect more money on its

loss claims, and rectify any ambiguities regarding its ability to refer these debts to Treasury.

### Comments on the Proposed Rule and Responses

A proposed rule was published on April 7, 2005, [70 FR 17616-17618] and no comments were received.

### List of Subjects in 7 CFR Part 4279

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

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

### PART 4279—GUARANTEED LOANMAKING

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

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

### Subpart B—Business and Industry Loans

■ 2. Section 4279.149 is revised to read as follows:

#### § 4279.149 Personal and corporate guarantee.

(a) Unconditional personal and corporate guarantees are part of the collateral for the loan, but are not considered in determining whether a loan is adequately secured for loanmaking purposes. Agency approved personal and corporate guarantees for the full term of the loan and at least equal to the guarantor's percent interest in the borrower, times the loan amount are required from those owning greater than a 20 percent interest in the borrower, unless the lender documents to the Agency's satisfaction that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan. The guarantors will execute an Agency approved unconditional guarantee form. When warranted by an Agency assessment of potential financial risk, Agency approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and require security for any guarantee provided under this section.

(b) Exceptions to the requirement for personal guarantees must be requested by the lender and concurred by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan.

Dated: October 4, 2006.

**William F. Hagy III,**

*Acting Administrator, Rural Business-Cooperative Service.*

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**BILLING CODE 3410-XY-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**15 CFR Parts 730, 738, 740, 742, 746, 750, 752, and 774**

**[Docket No. 050428118-5118-01]**

**RIN 0694-AC82**

### Imposition of Foreign Policy Controls on Surreptitious Communications Intercepting Devices

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by imposing new foreign policy export and reexport controls on devices primarily useful for the surreptitious interception of wire, oral, or electronic communications classified under Export Control Classification Number (ECCN) 5A980. In this rule, BIS also imposes controls on related software and technology by creating ECCNs 5D980 and 5E980. BIS is taking this action in order to prevent the unlawful interception of oral, wire, or electronic communications by terrorists and others who may put the information gained through intercepted communications to an unlawful use, to promote the protection of privacy of oral, wire, or electronic communications; and to protect against threats of terrorism around the world.

**DATES:** This rule is effective November 20, 2006.

**ADDRESSES:** Although there is no formal comment period, public comments on this regulation are welcome and should be sent to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov), by fax (202) 482-3355 or by mail or hand delivery to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694-AC82 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to

[David\\_Roster@omb.eop.gov](mailto:David_Roster@omb.eop.gov), or by fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Telephone (202) 482-4252, or E-mail: [jroberts@bis.doc.gov](mailto:jroberts@bis.doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

This rule amends the Export Administration Regulations (EAR) by imposing new foreign policy controls ("SL" for surreptitious listening) on devices primarily useful for the surreptitious interception of wire, oral, or electronic communications, as well as related software and technology. The Bureau of Industry and Security (BIS) is taking this action in order to prevent the unlawful interception of oral, wire, or electronic communications by terrorists and others who may put the information gained through intercepted communications to an unlawful use; to promote the protection of privacy of oral, wire, or electronic communications; and to protect against threats of terrorism around the world. This rule amends the EAR by imposing a license requirement for SL reasons to all destinations on devices primarily useful for surreptitious interception of wire, oral or electronic communications classified under Export Control Classification Number (ECCN) 5A980. This rule also imposes controls on related software and technology by creating ECCN 5D980 for software primarily useful for the surreptitious interception of wire, oral, or electronic communications, and software primarily useful for the "development", "production", or "use" of devices controlled under ECCN 5A980; and by creating ECCN 5E980 for technology primarily useful for the "development", "production", or "use" of devices controlled under ECCN 5A980.

This rule also imposes a license requirement for AT reasons on exports and reexports of items controlled under 5A980, 5D980, or 5E980 to Cuba, Iran, North Korea, Sudan, and Syria. BIS will generally deny all applications involving terrorist supporting countries and those involving a material contribution to certain proliferation activities as set forth in part 744 of the EAR.

BIS will generally approve applications for the export and reexport of items classified under 5A980, 5D980, or 5E980 to all other destinations, except for destinations for which a

license is required for AT reasons, by providers of wire or electronic communication service acting in the normal course of business; or officers, agents, or employees of, or persons under contract with, the United States, a State, or a political subdivision thereof in the normal course of activities of any of the governmental entities listed. License applications from other parties will generally be denied.

The license requirement for 5A980, 5D980, and 5E980 items is not reflected on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). The requirement is set forth at the entries for ECCNs 5A980, 5D980, and 5E980 on the Commerce Control List (CCL) in part 774 of the EAR and also in section 742.13(a) of the EAR. Section 742.13(b) of the EAR sets forth the licensing policy for surreptitious communications intercepting devices controlled under 5A980, as well as related software and technology controlled under newly created ECCNs 5D980 and 5E980.

The license requirements set forth in the EAR are independent of the requirements of section 2512 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. 2512). These controls do not supersede, nor do they implement, construe, or limit the scope of any of the statutory restrictions of section 2512 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, that are enforced by the U.S. Department of Justice.

This rule maintains the restriction on License Exception availability for the export or reexport of items primarily useful for surreptitious interception of wire, oral, or electronic communications, or related software, controlled under ECCNs 5A980, as set forth in section 740.2(a), Restrictions on all License Exceptions, of the EAR. Only License Exception Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV) is available to export or reexport such items if consigned to and for the official use of an agency of the U.S. Government, as set forth in section 740.11(b)(2)(ii) of the EAR. This rule places the same restrictions on License Exception availability for software controlled under new ECCN 5D980. No License Exceptions are available for the export or reexport of technology useful for surreptitious interception of wire, oral, or electronic communications covered under new ECCN 5E980.

This action is taken after consultation with the Secretary of State. BIS submitted a foreign policy report to the