

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1720

RIN 0572-ZA06

#### Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations for the guarantee program for cooperative and other not-for-profit lenders that make loans for eligible electric and telephone purposes. These proposed amendments implement changes adopted in the Food, Conservation and Energy Act of 2008 (Pub. L. 110-246). The intended effect is to update agency regulations to reflect current statutory authority.

**DATES:** *Effective Date:* This rule is effective August 23, 2010.

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

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to

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

##### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) advising that RUS loans and loan guarantees are not covered by Executive Order 12372.

##### Information Collection and Recordkeeping Requirements

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

##### National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

##### Regulatory Flexibility Act Certification

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

##### Executive Order 12988

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

##### Unfunded Mandates

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

##### Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

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

This executive order imposes requirements on Federal agencies in the development of regulatory policies that have tribal implications or preempt tribal laws. The RUS has determined that this rule relating to loan guarantees for non-profit lenders does not preempt tribal laws, or have a substantial direct effect on either one or more Indian tribe(s) or on the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175.

##### Executive Order 13211

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

##### E-Government Act Compliance

The Agency is committed to complying with the E-Government Act,

to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Background

On February 5, 2010, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1720, Guarantees for Bonds and Notes issued for Electrification and Telephone Purposes (75 FR 5902). This rule amends the Agency's policies and procedures for granting guarantees to eligible cooperatives and other not-for-profit lenders that make loans for eligible electric and telephone purposes under the Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 901 *et seq.*). The amendments to part 1720 revise the current regulations to implement changes made by the 2008 Farm Bill and to clarify existing provisions. The public was invited to submit comments on or before April 6, 2010. Two comments were received and are addressed in the Discussion of Comments section of this rule.

The RE Act authorizes the Secretary to guarantee and make loans to persons, corporations, States, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, *see* 7 CFR 1700.25.

Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (FSRIA) amended the RE Act to add section 313A (7 U.S.C. 940c-1) entitled "Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes." This section created a new loan guarantee program (313A program) for eligible non-profit lenders. Final regulations implementing the program were published in the **Federal Register** on October 29, 2004, 69 FR 63045.

Section 6106(a)(1)(A) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) amended section 313A of the RE Act extending the program authorization from September 30, 2007, to September 30, 2012, expanding eligible loan purposes, and

setting an annual limit of \$1,000,000,000 on the total amount of guarantees approved by the Secretary during a fiscal year, subject to the availability of funds. Prior to the 2008 amendment the total amount of a lender's bonds and notes that could be guaranteed under this section was limited to the total amount of loans made by the lender concurrently with a loan approved by the Secretary under the RE Act.

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

### Discussion of Comments

The proposed rule was published on February 5, 2010, at 75 FR 5902. Comments were due on April 6, 2010.

RUS received two written public comments via the Regulations.gov portal on the proposed rule amending 7 CFR part 1720, the regulations implementing section 313A of the RE Act (7 U.S.C. 940c-1).

CoBank, ACB (CoBank), a member of Farm Credit System overseen by the Farm Credit Administration (FCA) and a major lender to electric cooperatives, including many RUS borrowers, expressed its concerns that part 1720 as proposed, if implemented without change or clarification "could be read to preclude entities such as CoBank from participating in the program as a guaranteed lender." CoBank commented on an unchanged section of the existing rule (7 CFR 1720.4(b)(1)) relating to restrictions on patronage and dividend distributions in the event of a decline in credit quality of a participating lender and requested clarification of lender eligibility under 7 CFR 1720.5(a)(1).

The National Rural Utilities Cooperative Finance Corporation (CFC), an existing participant in the program, commented on two proposed additions to the evaluation criteria in 7 CFR 1720.7(b) that the Agency would use to consider applications competitively.

### Senior Secured Debt

*Comment:* CoBank seeks clarification on the applicability of 7 CFR 1720.4(b)(1) of the existing regulation which limits payments of cash patronage and dividends by a participating lender when the credit rating on its senior secured debt has fallen below an "A\_\_" rating.

CoBank contends that the limitation imposed by existing section 1720.4(b)(1) on the payment of cash patronage and dividends to guaranteed lenders having a credit rating below "A\_\_" on senior secured debt (without regard to the guarantee) is problematic because CoBank does not issue senior secured debt and, accordingly, could never be in compliance with this condition as it could never obtain a senior secured debt rating. In its comments, CoBank seeks clarification that this regulation does not apply to institutions that do not issue senior secured debt.

*Response:* RUS does not read existing 7 CFR 1720.4(b)(1) as requiring a guaranteed lender to have senior secured debt in order to avoid the patronage and dividend limitations imposed by such provision. RUS reads this provision as only being applicable to entities that have senior secured debt. Therefore, no change is being made to existing section 1720.4(b)(1).

### Pre-Existing Contractual Commitments To Pay Dividends

*Comment:* CoBank also contends that existing 7 CFR 1720.4(b)(1) should be modified because it places a restriction on CoBank's ability to make dividend payments despite CoBank's pre-existing contractual commitments to pay dividends on its preferred stock.

*Response:* As stated above, section 1720.4(b)(1) only applies to entities that issue senior secured debt. While section 1720.4(b)(1) is inapplicable to entities not having senior secured debt, this does not mean that RUS is indifferent to the risks that a borrower's unrestricted discretion to make distributions present to a creditor. However, in the case of CoBank, CoBank has pointed out that the risk has been addressed through regulations of the FCA. FCA directly regulates CoBank's ability to issue cash patronage refunds and dividends. RUS agrees that the regulations of the FCA are helpful in addressing the concerns reflected in section 1720.4(b)(1), however, RUS does not believe it is necessary to remove the restriction as CoBank has suggested since, for reasons already stated, the provision would not apply in CoBank's circumstances. RUS reserves the right to incorporate suitable alternatives to section 1720.4(b)(1) in the transaction documents of borrowers such as CoBank, and no change is being made in this rule.

### Lender Eligibility

*Comment:* CoBank suggests that 7 CFR 1720.5(a)(1), as RUS proposed to revise it, establishes the eligibility criteria in an overly narrow manner by stating that eligible entities may be

“organized on a non-profit basis.” CoBank suggests that this language may be construed to mean that an eligible entity needs to be a non-profit entity organized under State law and that this result was not contemplated by Congress. In CoBank’s view, this reading of the proposed regulation may serve to exclude from participation in the section 313A guarantee program entities that are not organized as non-profit entities under State law. In its comments, CoBank seeks confirmation that this regulation requires applicants to have substantive non-profit status, and that this regulation does not require that applicants be created as non-profit entities under State law.

*Response:* RUS does not read the language of proposed section 1720.5(a)(1) as requiring an entity to be organized as a non-profit entity under State law in order to be an eligible applicant under the 313A guarantee program. Furthermore, it finds nothing in the legislative history that would support such an interpretation that results in a policy excluding entities on the basis of whether they have been organized under State laws or Federal laws. RUS notes that similar language in section 306 of the RE Act (7 U.S.C. 936) establishing the core RUS guaranteed loan programs has for many years been interpreted to include CoBank. Therefore, RUS confirms that the final rule requires substantive non-profit status, not particular types of State law entities. The language itself has not been changed.

#### **Application Evaluation Factor Involving Supervision, Examination, and Safety and Soundness Regulation of Applicant by an Independent Federal Agency**

*Comment:* CFC contends that the new evaluation criterion proposed to be included in 7 CFR 1720.7(b)(4) would disadvantage entities like CFC that are not regulated by an independent Federal agency. The proposed section 1720.7(b)(4) would allow RUS to consider the extent to which an applicant is subject to “supervision, examination, and safety and soundness regulation by an independent federal agency” as an evaluation factor in connection with the awarding of guarantees under the 313A program. CFC contends that it is not subject to an established regulatory scheme and, as a result, will not be able to satisfy this evaluation criterion. Moreover, CFC essentially contends that although it is not regulated by a Federal agency, CFC’s compliance with certain reporting requirements, their submission of financial statements to RUS, and the

inclusion of a financial expert on its board of directors at the request of the U.S. Treasury Department serve to provide disclosure and oversight comparable to or exceeding that required by Federal regulation.

*Response:* RUS believes that the fact that an applicant is regulated by an independent Federal agency provides a substantial benefit in that the additional oversight provided by a Federal agency tasked with the regulation of lending institutions provides RUS with an additional layer of security. Accordingly, the factor is appropriate for RUS to consider since regulatory oversight benefits RUS because it serves to lessen RUS’ financial risk as the guarantor in the 313A program. The examples that CFC references are not comparable to the comprehensive regulatory scheme of the FCA. Therefore, no change is being adopted in the final rule. RUS notes that the degree of regulation is not an eligibility factor.

#### **Application Evaluation Factor Involving Concentration of Financial Risk Resulting From Previous Guarantees**

*Comment:* CFC contends that the new evaluation criterion proposed in 7 CFR 1720.7(b)(5) would serve to penalize entities that have previously received guarantees made under section 313A of the RE Act. Proposed section 1720.7(b)(5) provides that RUS take into consideration “[t]he extent of concentration of financial risk that RUS may have resulting from previous guarantees made under section 313A of the RE Act.” CFC suggests that prior RUS guarantees made under the 313A program are sufficiently secured by CFC’s underlying credit strength and its pledged loan collateral. Accordingly, CFC contends that financial risk to RUS is already minimized and suggests that if RUS seeks to further minimize its risk, it could modify this proposed language to limit a guaranteed lender’s ability to make loans to a single entity in an amount that exceeds ten percent of the total section 313A guaranteed loans outstanding to RUS.

*Response:* RUS believes that a legitimate purpose is served by considering the concentration of outstanding section 313A guarantees. Although there are existing protections in place to minimize RUS’ risk with respect to the existing guaranteed lender, RUS believes that it is still prudent risk management to consider the amount of its existing exposure to each guaranteed lender under the 313A program when acting on applications for

additional guarantees. Therefore, no change is being made in the final rule.

#### **List of Subjects in 7 CFR Part 1720**

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

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

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

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

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

■ 2. Revise § 1720.1 to read as follows:

##### **§ 1720.1 Purpose.**

This part prescribes regulations implementing a guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the Rural Electrification Act of 1936 (7 U.S.C. 940c–1).

■ 3. Revise § 1720.2 to read as follows:

##### **§ 1720.2 Background.**

The Rural Electrification Act of 1936 (the “RE Act”) (7 U.S.C. 901 *et seq.*) authorizes the Secretary to guarantee and make loans to persons, corporations, States, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, *see* 7 CFR 1700.25. Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (FSRIA) amended the RE Act to include a new program under section 313A entitled Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes. This measure directed the Secretary of Agriculture to promulgate regulations that carry out the Program. The Secretary published the regulations for the program in the **Federal Register** as a final rule on

October 29, 2004, adding Part 1720 to Title 7 of the Code of Federal Regulations. Section 6106(a)(1)(A) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) amended section 313A of the RE Act by replacing the level of "concurrent loans" as a factor limiting the amount of bonds and notes that could be guaranteed and inserted "for eligible electrification or telephone purposes" as the limitation on the amount of bonds and notes that can be guaranteed under section 313A up to an annual program limit of \$1,000,000,000, subject to availability of funds. Section 6106(a)(1)(B) further amended section 313A of the RE Act by removing the prohibition against the recipient using an amount obtained from the reduction in funding costs as a result of a new guarantee under section 313A to reduce the interest rate charged on a new or concurrent loan.

■ 4. Amend § 1720.3 by revising the definition of "Borrower" and adding the definition of "Eligible Loan" as follows:

§ 1720.3 Definitions.

\* \* \* \* \*

*Borrower* means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification or rural telephone under the RE Act, or that is eligible for such financing.

\* \* \* \* \*

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

\* \* \* \* \*

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

§ 1720.4 General standards.

(a) \* \* \*

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

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

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

(b) \* \* \*

(2) Maintain sufficient collateral equal to the principal amount outstanding, for guaranteed lenders having a credit rating below "A -" on its senior secured debt without regard to the guarantee, or in the case of a lender that does not have senior secured debt, a corporate (counterparty) credit rating below "A -" without regard to the guarantee. Collateral shall be in the form of specific and identifiable unpledged securities equal to the value of the guaranteed amount. In the case of a guaranteed lender's default, the U.S. government claim shall not be subordinated to the claims of other creditors, and the indenture must provide that in the event of default, the government has first rights on the asset. Upon application and throughout the term of the guarantee, guaranteed lenders not subject to collateral pledging requirements shall identify, with the concurrence of the Secretary, specific assets to be held as collateral should the credit rating of its senior secured debt, or its corporate credit rating, as applicable, without regard to the guarantee fall below "A -." The Secretary has discretion to require collateral at any time should circumstances warrant.

\* \* \* \* \*

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

§ 1720.5 Eligibility criteria.

(a) \* \* \*

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

§ 1720.6 Application process.

(a) \* \* \*

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

\* \* \* \* \*

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

§ 1720.7 Application evaluation.

\* \* \* \* \*

(b) \* \* \*

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

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

(5) The extent of concentration of financial risk that RUS may have resulting from previous guarantees made under section 313A of the RE Act; and

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

\* \* \* \* \*

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

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

§ 1720.8 Issuance of the guarantee.

(a) \* \* \*

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

the guaranteed lender used to fund eligible loans;

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 1720.12 Reporting requirements.**

(a) \* \* \*

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

\* \* \* \* \*

■ 11. Revise § 1720.13 to read as follows:

**§ 1720.13 Limitations on guarantees.**

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

**Jonathan Adelstein,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2010-17817 Filed 7-21-10; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 274a**

[ICE 2345-05; DHS-2005-0046]

RIN 1653-AA47

**Electronic Signature and Storage of Form I-9, Employment Eligibility Verification**

**AGENCY:** U.S. Immigration and Customs Enforcement, DHS.

**ACTION:** Final rule.

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**SUMMARY:** This final rule amends Department of Homeland Security regulations to provide that employers and recruiters or referrers for a fee who

are required to complete and retain the Form I-9, Employment Eligibility Verification, may sign this form electronically and retain this form in an electronic format. This final rule makes minor changes to an interim final rule promulgated in 2006.

**DATES:** This final rule is effective August 23, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Allen Vanscoy, Office of Investigations, U.S. Immigration and Customs Enforcement, 500 12th St., SW., Washington, DC 20024. Telephone (202) 732-5798 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Employment Eligibility Verification Requirement*

Section 274A of the Immigration and Nationality Act, as amended (INA), 8 U.S.C. 1324a, requires all U.S. employers, agricultural associations, agricultural employers, farm labor contractors, or persons or other entities that recruit or refer persons for employment for a fee, to verify the employment authorization and identity of all employees hired to work in the United States after November 6, 1986. To comply with the law, an employer, or a recruiter or referrer for a fee, is responsible for the completion of a Form I-9, Employment Eligibility Verification (Form I-9), for each new employee, including United States citizens. 8 CFR 274a.2.

The completed Form I-9 is not filed with the Department of Homeland Security (DHS). Rather, the Form I-9 is retained by the employer who must make it available for inspection upon a request by Immigration and Customs Enforcement (ICE) investigators or other authorized federal officials. Employers are required to retain a Form I-9 in their own files for three years after the date of hire of the employee or one year after the date that employment is terminated, whichever is later. 8 CFR 274a.2(c)(2). Recruiters or referrers for a fee are required to retain each Form I-9 for three years after the date of hire. *Id.* at (d)(2). Failure to properly complete and retain each Form I-9 may subject the employer or recruiter or referrer for a fee to civil money penalties. INA section 274A(e)(5), 8 U.S.C. 1324a(e)(5).

*B. Format of the Form I-9*

The Form I-9 has been available to the public in numerous paper and electronic means since 1986. The Form I-9 is available online at the U.S. Citizenship and Immigration Services (USCIS) Web site as a Portable Document Format (.pdf) fillable and

printable form. <http://uscis.gov/files/form/i-9.pdf>.

This final rule permits employers to complete, sign, scan, and store the Form I-9 electronically (including an existing Form I-9), as long as certain performance standards set forth in this final rule for the electronic filing system are met. DHS has separately revised the substantive documentary requirements for employment verification that form the basis for the Form I-9. *Documents Acceptable for Employment Eligibility Verification*, 73 FR 76505 (Dec. 17, 2008).

*C. Regulatory History*

In June 2006, DHS published an interim final rule to permit electronic signature and storage of the Form I-9. 71 FR 34510 (June 15, 2006). The interim rule implemented Public Law 108-390, 118 Stat. 2242 (Oct. 30, 2004), and INA section 274A, 8 U.S.C. 1324a. The interim rule amended DHS regulations to permit employers to complete, sign, scan, and store the Form I-9 electronically (including an existing Form I-9), as long as certain performance standards set forth in this final rule for the electronic filing system are met. See 8 CFR 274a.2. This final rule responds to public comments received on the interim final rule and adopts the interim final rule with changes noted below.

**II. Changes Made by This Final Rule**

In this final rule, DHS makes minor modifications to 8 CFR 274a.2 to clarify certain provisions that:

- Employers must complete a Form I-9 within three business (not calendar) days;
- Employers may use paper, electronic systems, or a combination of paper and electronic systems;
- Employers may change electronic storage systems as long as the systems meet the performance requirements of the regulations;
- Employers need not retain audit trails of each time a Form I-9 is electronically viewed, but only when the Form I-9 is created, completed, updated, modified, altered, or corrected; and
- Employers may provide or transmit a confirmation of a Form I-9 transaction, but are not required to do so unless the employee requests a copy. The final rule makes technical and conforming amendments to the regulations.

**III. Comments and Responses**

This final rule responds to the nine comments received from trade associations and agencies and