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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4279

[Docket No. RBS–20–BUSINESS–0016]

RIN 0570–AB07

Guaranteed Loanmaking and Servicing Regulations

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RB–CS) (Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing a final rule to amend the interim rule published on May 22, 2020. The interim rule amended 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. This final rule addresses public comments received on the interim rule and makes clarifying modifications identified by commenters and the Agency.

DATES:

Effective date: November 24, 2023.

Applicability dates: This final rule applies to applications submitted under the B&I CARES Act Guaranteed Loan Program from May 22, 2020, and received no later than 11:59 p.m. Eastern Time on September 15, 2021, or until Program funding expired on September 30, 2021.

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

SUPPLEMENTARY INFORMATION:

I. Background Information

The RD is a mission area within the USDA that is comprised of the RB–CS, the Rural Housing Service (RHS), and the Rural Utilities Service (RUS). 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, the RD 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 under Section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended by subsequent Farm Bills, with the aim to revitalize and develop rural areas and to help foster a balance between rural and urban America. The loans are made by private lenders to rural businesses for the purposes of creating new businesses, expanding existing businesses, and for other purposes of creating employment opportunities in rural America. Businesses located 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.

On March 13, 2020, the ongoing Coronavirus Disease 2019 (COVID–19) pandemic was declared of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 Public Health Emergency, many businesses nationwide began experiencing economic hardship as a direct result of the Federal, State, and local public health measures that were 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,'' resulted in a dramatic negative impact on the livelihood of many Americans and, in turn, negatively impacted the national economy.

In order to provide critical 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.

II. Purpose of This Regulatory Action

This final rule updates the B&I CARES Act Program Loans, as implemented in 7 CFR part 4279—Guaranteed Loan Making and 7 CFR part 4287—Servicing and as published in the **Federal Register** on May 22, 2020, as an interim rule.

RBCS received funding and authority through Division B, Title I of the CARES Act to provide additional funds for use under the B&I Guaranteed Loan Program to prevent, prepare for, and respond to the effects of the COVID–19 pandemic. The regulatory impact analysis for the interim rule documents the anticipated costs and benefits of the program against the benchmark of no rule (*i.e.,* absent the interim final rule). In summary, the baseline of the cost benefit analysis for the interim final rule was mostly qualitative using existing information the Agency had from the B&I Guaranteed Loan Program and anticipated results of the provisions in the interim rule that allowed the flexibility to obligate Federal funds for guaranteed loans pursuant to the CARES Act in response to the nation COVID–19 Public Health Emergency. As a result of these considerations and the funding purposes outlined in the CARES Act, the Agency decided to offer the

following—using the interim rule—under the B&I CARES Act Program: (1) 90-percent guarantees to all B&I CARES Act funded loans, (2) 2-percent guarantee fee; (3) acceptance of appraisals completed within 2 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. The regulatory impact analysis associated with the interim final rule can be viewed at *www.regulations.gov* under Docket No. RBS–20–BUSINESS–0016.

The economic impacts of the final rule are minimal or de minimus when set against the benchmark for the interim final rule. The CARES Act provided $20,500,000 in budgetary authority, which RD anticipated would support an allocation of approximately $951,000,000 in loan guarantees, which supported approximately $811,645,477 in loan guarantees. Applications for B&I CARES Act funds expired at the end of fiscal year 2021 as all available funds were exhausted. Though RD staff have successfully implemented the regulatory requirements, they have determined through their continuous interaction with stakeholders that changes to the interim rule are needed to clarify eligible uses of funds and to further improve program delivery. Eligible uses of funds include the ability of borrowers to address financial needs related to COVID–19 in addition to loss of income, related challenges directly related to COVID–19, and challenges businesses faced in order to return to normal operations, not just losses incurred as a result of COVID–19. This final rule provides clarification of the Agency's position on the eligible use of funds for auditing purposes and future servicing actions including loss payments to lenders. Additionally, the Agency will be able to reference this final rule should the B&I program be utilized again to directly respond to and alleviate the issues resulting from another National Public Health Emergency.

III. Summary of Comments and Responses

On May 22, 2020 (85 FR 31035), the Agency published an interim rule to 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). The Agency received the following comments from one commenter:

Comment: The commenter suggested that from experience, the Agency understands that some companies need to expand production due to the pandemic such as Personal Protective Equipment (PPE) and sanitary products, while others need to provide PPE inventory to staff and protective materials for retail clients, which creates a need for financial assistance for items that also meet the impact of the crisis.

Agency Response: The Agency agrees with the commenter and clarifies in 7 CFR 4279.190(c)(1) that the borrower may use the program for financial needs related to the COVID–19 Public Health Emergency in general and not just to address the loss of income and to provide funds for operating overhead expenses in response to the epidemic.

Comment: One commenter stated that there appeared to be contradictory information in the interim regulation between the ''Preamble'' and the ''Eligible Use of Funds'' sections. The commenter indicated that the Preamble suggests that the 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. However, the commenter asserted that the ''Eligible Use of Funds'' section states that B&I CARES Act Program Loans should not exceed the amount needed to overcome the financial distress caused by the COVID–19 Public Health Emergency. The commenter further specified that there appears to be a discrepancy between intent, which includes ramping up business operations, and the actual regulation which appears to only address a shortfall in operating capital.

Agency Response: The Agency concurs with the concern raised by the commenter and revises 7 CFR 4279.190(c)(1) to include language to address the discrepancy and clarify the intent of the program.

Comment: One commenter expressed a concern that the B&I CARES Act program could be interpreted to be for the primary purpose of covering operating losses only, rather than for working capital in totality, and further encourages the Agency to recognize that a business may have needs now that were not present pre-Coronavirus, and the business may need more working capital than before the pandemic.

Agency Response: The Agency concurs with this concern raised by the commenter and revises 7 CFR 4279.190(c)(3)(viii) by adding language to the eligible purposes to include additional expenses due to challenges directly related to the national COVID–19 Public Health Emergency.

Comment: One commenter commented that the Agency should understand the ever-changing environment that businesses face and allow the B&I CARES Act Program to provide working capital to get the business back on a strong footing.

Agency Response: The Agency concurs with this statement and revises 7 CFR 4279.190(d)(2) to clarify the intent of the program and the ability to ''address challenges'' caused by the COVID–19 Public Health Emergency.

IV. Summary of Changes

The following is a summary list of changes to the B&I CARES Act Program (7 CFR 4279.190) as a result of public comments:

1. Add language in the introductory text of § 4279.190(a) to clarify that a loan is limited to the amount necessary to address a borrower's financial needs related to the COVID–19 Public Health Emergency.

2. In § 4279.190(c)(1) and (2), add language that refers to the challenges faced by borrowers due to the COVID–19 Public Health Emergency in order to clarify the use of the B&I CARES Act Program Loans.

3. In § 4279.190(c)(3)(i), (iv), and (viii), clarify that the eligible use of loan funds for borrowers for challenges directly related to the National COVID–19 Public Health Emergency includes the owner's wages and salaries if these costs were verifiable and constitute historical working capital costs.

4. In § 4279.190(d)(1), (2), and (3), include language clarifying minimum loan amount threshold, inventory and production costs, and the maximum loan amount.

The following is a summary list of the technical corrections and clarifications to the B&I CARES Act Program (7 CFR 4279.190):

5. Correct the authority citation for 7 CFR part 4279 by adding 7 U.S.C. 1932(a), which includes 7 CFR 4287, Servicing for the B&I Program.

6. In § 4279.190(c)(5), specify that the Agency should verify ineligibility for Farm Service Agency (FSA) loan programs, and clarify that agricultural producers must be located in a rural area as defined in 7 CFR 4279.108(c) unless they meet the food processing provisions under 7 CFR 4279.113(y). The interim rule only allowed for eligibility for B&I CARES Act Program Loans if the loan amount exceeded the FSA size limit or the applicant was otherwise ineligible for FSA programs.

7. In § 4279.190(h), add language to clarify loan terms and provisions.

8. In § 4279.190(k)(1) and (3), add language that was originally omitted from the interim rule regarding ''tangible balance sheet equity.''

9. In § 4279.190(k)(2), add clarifying language regarding borrower equity allowing additional sources of matching funds, which was inadvertently omitted from the interim rule.

10. In § 4279.190(m), add introductory language to clarify the application information and priority scoring process.

11. In § 4279.190(m)(4)), add language to clarify the use of a borrowers' application request for the B&I CARES Act loan process.

Executive Order 12866, Regulatory Planning and Review

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866 and determined to be significant for the purposes of Executive Order 12866. The Executive Order defines a section 3(f)(1) ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $200 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 E.O. This final rule was determined to be significant because the changes to the B&I Guaranteed Loan Program regulations are estimated to have an impact on the economy of more than $200 million.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this final 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 final rule will be preempted. No retroactive effect will be given to this final 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 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 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 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 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 Tribal Coordinator at (720) 544–2911 or *AIAN@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** in accordance with 5 U.S.C. 603 and 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. Except for such small government jurisdictions as defined in 5 U.S.C. 601 (5), neither State nor local governments are considered small entities. Similarly, for purposes of the RFA, individual persons are not small entities. As outlined in 5 U.S.C. 605(b), 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.'' In addition, 5 U.S.C. 604(a) and 608(b) specifies that 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. 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 sections 553(b)(3)(B) and 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 final rule are approved under OMB Control Number 0570–0069 and this final rule contains no new reporting or recordkeeping burdens.

E-Government Act Compliance

The RB–CS 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

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (1) this action meets the criteria established in 7 CFR 1970.53(f); (2) no extraordinary circumstances exist; and (3) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Assistance Listing

The program described by this final rule is listed in the Assistance Listings (AL), (formerly Catalog of Federal Domestic Assistance (CFDA)), under number 10.766—Business and Industry Guaranteed Loan Program.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments, or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts this 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 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 final rule will not likely adversely or 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 familial status.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or 711 Relay service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (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; 7 U.S.C. 1989: 7 U.S.C. 1932(a); and Public Law 116–136, Division B, Title I.

Subpart B—Business and Industry Loans

■ 2. Amend § 4279.190 by:
■ a. Revising and republishing paragraph (a);
■ b. Revising and republishing paragraphs (c)(1), (2), (3), and (5);
■ c. Revising and republishing paragraphs (d)(1), (2), and (3);
■ d. Revising and republishing paragraph (h);
■ e. Revising and republishing paragraphs (k)(1), (2), and (3);
■ f. Adding introductory text to paragraph (m); and
■ g. Revising paragraph (m)(4).

The revisions, republications, and addition 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 limited to the amount necessary to address the borrower's financial needs related to the COVID–19 Public Health Emergency. 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 this part and subpart B 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.

* * * * *

(c) * * *

(1) *Purpose.* 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, limited to the amount necessary to address the borrower's financial needs related to the COVID–19 Public Health Emergency, 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 or related challenges caused by the COVID–19 Public Health Emergency.

(2) *Use of loan proceeds.* 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. Loan proceeds issued in full at loan closing must be evidenced by documented need provided by the lender and with concurrence of the Agency.

(3) *Eligible working capital uses.* 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; owner's wages and salaries may be considered if these costs are verifiable and constitute historical working capital costs;

(ii) Administrative expenses and administrative service contracts;

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

(iv) Principal and interest payments on outstanding debt excluding owner/stockholder debt and related-party debts; payments may include existing Business & Industry loan payments to bring loans current as loan payments to a creditor are a working capital expense;

(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 challenges directly related to the national COVID–19 Public Health Emergency;

(ix) Taxes; and

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

* * * * *

(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 FSA guaranteed loan programs or the applicant's request is otherwise ineligible for FSA loans. The Agency should verify ineligibility for FSA loan programs. Agricultural producers must be located in a rural area as defined in 7 CFR 4279.108(c) unless they meet the requirements provided for under 7 CFR 4279.113(y).

(d) * * *

(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. There is no minimum threshold for B&I CARES Act Program loans.

(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 address challenges caused by the COVID–19 emergency, including those related to inventory and production costs, 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. The 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. The amount of the B&I CARES Act Program loan will be reduced by any SBA Paycheck Protection Program (PPP) loans received by the borrower.

(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 sections 1102 and 1110(a)(2) of the CARES Act and other Federal emergency assistance received. Annual tax returns may be utilized to calculate the maximum loan amount under the B&I CARES Act Program. It is the Agency's preference to review the last three full years of operations to calculate average working capital expenses for the borrower. If three years of financial information is not available, then actual working capital expenses for the business duration may be evaluated. Borrowers, who have not been in operation for a full year may estimate an average monthly cost of eligible working capital based on available historical months as long as they were in operation as of February 15, 2020.

* * * * *

(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. B&I CARES Act Program Loans must be paid in full since the B&I CARES Act Program provides no loan forgiveness.

* * * * *

(k) * * *

(1) A minimum of 10 percent balance sheet equity or tangible 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). Additional sources of matching funds may be derived from other loan funds; however, such funds must be in the form of cash. In-kind contributions are not eligible to meet equity requirements; or

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

* * * * *

(m) * * * Applications are to be received and processed in the State Office in the State where the business is located. Funds will be maintained in a National Office Reserve account. The Agency will consider applications in the order they are received by the Agency on a first come, first served basis. Priority scoring will not be needed initially, however towards the end of the funding period the Agency will need to assign priority points for the limited remaining funds and for this purpose the Agency will score and compare an application to other pending applications that are competing for funding in accordance with 7 CFR 4279.166.

* * * * *

(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. State Offices are allowed to use the same lender's analysis for each request. The existing Conditional Commitment template can be used for B&I CARES Act Program loans and deletion of certain provisions that do not impact the borrower or credit quality can be removed. Business Program Directors are encouraged to contact the National Office Program Processing Division with any questions regarding borrower eligibility, use of B&I loan proceeds, calculations of the loan amount or borrower equity, and any other questions related to a specific project. The provisions of this section do not apply to applications for B&I appropriated fiscal year funds.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–25908 Filed 11–22–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapter IX

[Doc. No. AMS–SC–22–0051]

Nomenclature Changes; Technical Amendments

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule; technical amendments.

SUMMARY: This rule revises the general regulations for Federal marketing orders covering fruits, vegetables, and specialty crops by updating the section regarding information collections. Further, this rule updates nomenclature in the general regulations, numerous Federal marketing orders, the import regulations, the domestic hemp program regulations, and the peanut handling regulations administered by the Agricultural Marketing Service (AMS). Finally, this rule corrects typographical errors found in the AMS marketing order and import regulations and removes regulations no longer in effect. These changes are necessary to provide more accurate information in the regulations moving forward.

DATES: Effective November 24, 2023.

FOR FURTHER INFORMATION CONTACT: Matthew Pavone, Branch Chief, Rulemaking Services Branch, or Andrew Hatch, Deputy Director of Operations, Market Development Division, Agricultural Marketing Service, USDA; phone: (202) 720–2491 or email: *Matthew.Pavone@usda.gov* or *Andrew.Hatch@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, makes updates and corrections to regulations issued to carry out marketing orders as defined in 7 CFR 900.2(j). This rule revises the General Regulations (7 CFR part 900) and the marketing orders in numerous other parts of chapter IX that regulate the handling of fruits, vegetables, nuts, and specialty crops (parts 905, 906, 915, 917, 920, 929, 930, 932, 945, 948, 955, 958, 959, 966, 981, 982, 983, 985, 987, 989, and 993) and imported products (parts 944, 980, and 999). These parts are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' In addition, this rule corrects typographical errors in the domestic hemp program regulations (part 990), which are effective under the Agricultural Marketing Act of 1946, as amended. Finally, this rule makes corrections to the peanut handling regulations (part 996), which are effective under Public Law 107–171, the Farm Security and Rural Investment Act of 2002, as amended (7 U.S.C. 7958).

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, AMS is issuing this final rule in conformance with Executive Orders 12988, 13175, and 13563.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. AMS has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment because the revisions are not substantive and will have no impact on the regulatory requirements in the affected parts. In addition, AMS has determined that public comment on such administrative changes is unnecessary and that there is good cause under the APA for proceeding with a final rule.

Further, because a notice of proposed rulemaking and opportunity for public comment is not required to be given for this rule under the APA or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, this rule is issued in final form.

Overview of Changes

This final rule makes technical amendments to regulations in 7 CFR parts 900, 905, 906, 915, 917, 920, 929, 930, 932, 944, 945, 948, 955, 958, 959, 966, 980, 981, 982, 983, 985, 987, 989, 990, 993, 996, and 999. USDA has determined that this action is only administrative in nature. This action updates the information collection provisions in § 900.601 to remove obsolete references and to align current Office of Management and Budget (OMB) control numbers and descriptions with the appropriate programs. This rule also revises outdated nomenclature in the general regulations pertaining to marketing agreements and marketing orders in 7 CFR part 900; in Federal marketing orders in 7 CFR parts 905, 915, 932, 945, 958, 966, 987, and 989; in the import regulations contained in 7 CFR parts 944, 980, and 999; and in the peanut handling regulations in 7 CFR part 996 to reflect current nomenclature. For example, the name of the Marketing Order and Agreement Division has been changed to Market Development Division, so references to the former name have been changed to reflect the current name. Additionally, this rule removes obsolete language and some regulatory sections (§§ 982.254 through 982.255; and §§ 985.234 through 985.236) that are no longer in effect. Lastly, this action corrects typographical errors throughout 7 CFR chapter IX. The final rule does not add to or amend any existing program requirements.

List of Subjects

7 CFR Part 900

Administrative practice and procedure, Freedom of information,