



441 G St. N.W.  
Washington, DC 20548

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December 20, 2013

The Honorable Debbie Stabenow  
Chairman  
The Honorable Thad Cochran  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Frank D. Lucas  
Chairman  
The Honorable Collin C. Peterson  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Rural Utilities Service: Energy Efficiency and Conservation Loan Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Rural Utilities Service (RUS) entitled “Energy Efficiency and Conservation Loan Program” (RIN: 0572-AC19). We received the rule on December 5, 2013.<sup>1</sup> It was published in the *Federal Register* as a final rule on December 5, 2013, with an effective date of February 3, 2014. 78 Fed. Reg. 73,356.

The final rule contains policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons in their service territory. This final rule amends RUS regulations on General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees, which were codified on December 20, 1993. The final rule also includes conforming amendments to additional RUS regulations. Under section 2 of the Rural Electrification Act of 1937 (RE Act), RUS is authorized to assist electric borrowers in implementing demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. The scope of this regulation falls within the authority of the Act.

Enclosed is our assessment of RUS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that RUS complied with the applicable requirements.

<sup>1</sup> The rule was marked as non-major when submitted on December 5, 2013. Upon further review, we noted that the rule stated that it was economically significant. The website of the Office of Information and Regulatory Affairs designated the rule as major. Upon contacting the agency directly, we received confirmation on December 9, 2013, that the rule should in fact be treated as major.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: John Charles Padalino  
Administrator, Rural Utilities Service  
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE  
ENTITLED  
"ENERGY EFFICIENCY AND CONSERVATION LOAN PROGRAM"  
(RIN: 0572-AC19)

(i) Cost-benefit analysis

RUS states that the new Subpart H for the Energy Efficiency and Conservation Loan Program can have several economic impacts. According to RUS, the benefits include: (1) the value of purchased energy saved; (2) the value of corresponding avoided generation, transmission and/or distribution; and (3) savings in energy bills. RUS notes that the final loan program is estimated to have administrative costs to the applicant and federal government, at about \$740,000 total for applicants, and about \$1.7 million for the federal government. The Energy Efficiency and Conservation Loan Program will impose administrative costs on applicants and the federal government. RUS presents quantitative estimates of the costs that have been made in the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

RUS has determined that the RFA is not applicable to this rule since it 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 the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

According to RUS, the final 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 or for the private sector. Therefore, RUS states that the final rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On July 26, 2012, the agency published a proposed rulemaking in the *Federal Register*. 77 Fed. Reg. 43,723. RUS received 63 comments on the proposed Energy Efficiency and Conservation Loan Program. RUS states that the 63 commenters consisted of industry representatives that included: electric cooperatives, such as South Carolina Electric and Gas company; nonprofit energy efficiency supporters, such as the E3 coalition and the Sierra Club; and envelope organizations that represent RUS borrowers, such as the National Rural Electric Cooperative Association. RUS notes that 62 of the 63 letters were extremely supportive of the regulation, and applauded RUS for proposing the program, while the opposing letter stated that

it was against all federal programs. RUS summarized the comments and major changes in response to the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

RUS states that in accordance with PRA, the information collection for this program has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572-0032.

Statutory authorization for the rule

RUS states that the final rule is authorized by section 2(a) of the Rural Electrification Act of 1936, 7 U.S.C. § 902(a), as amended by section 6101 of the Food, Conservation, and Energy Act of 2008.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule has been reviewed under the Order and has been determined to be “economically significant” by OMB.

Executive Order No. 13,132 (Federalism)

RUS states that the policies contained in the final rule do not have any substantial direct effect on state and local governments, on the relationship between the national government and the state and local governments, or on the distribution of power and responsibilities among the various levels of government and do not impose substantial direct compliance costs on state and local governments. Therefore, RUS believes consultation with the states is not required.