subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2004–05 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2004–05 marketing year as a percentage of total grower revenue could range between 1.3 and 1.9 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 10, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2004–05 marketing year began on August 1, 2004, and the order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) this action decreases the assessment rate for merchantable California walnuts; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2004, an assessment rate of $0.0094 per kernelweight pound is established for California merchantable walnuts.

Dated: October 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24160 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1720

RIN 0572–AB83

Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes procedures for a guarantee program for cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936 (the RE Act). Criteria for eligibility of lenders and transactions are set forth in the rule together with application procedures. Program participants are required to pay an annual fee for the guarantee. The fee will be credited to the Rural Development Subaccount to provide funds for zero-interest loans and grants pursuant to section 313 of the RE Act. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), amended the RE Act, by adding section 313A which establishes this program. In addition to providing funds to enhance rural development, this program will contribute to improving the technology and reliability of our rural electric transmission and distribution system.

DATES: This rule will become effective November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Doris Nolte, Chief, Policy Analysis and Loan Management Staff, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5155, Washington, DC 20250–1560. Telephone: (202) 720–0424. Fax: (202) 690–0717. E-mail: *Doris.Nolte@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

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

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS certifies that this

rule will not have significant impact on a substantial number of small entities. No small entities meet the statutory criteria for participation in the program that is the subject of this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require preparation of a Federalism Assessment.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the ''Act''), OMB must approve all ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this rule will involve less than 10 persons and do not require approval under the provisions of the Act.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

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).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) (Pub. L. 104–4, 109—Stat. 48) 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 Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

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.

Background

On December 30, 2003, at 68 FR 75153, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1720, Guarantees for Bonds and Notes issued for Electrification and Telephone Purposes. This proposed rule establishes the agency's policies and procedures for granting guarantees to eligible cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936 (the RE Act). The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), amended the RE Act, by adding section 313A which establishes this program.

A total of 231 letters were received commenting on the proposed rule. Two hundred and eighteen of these letters, which were received from electric cooperatives, electric cooperative associations, rural development organizations, and local governments, all requested that the rule be altered in a way that assures funding to the Rural Economic Development Loan and Grant Fund (REDLF). Many of the comments included the identification of successful economic development projects that benefited from REDLG funds. The majority of the 218 letters identified specific aspects of the proposed rule that should be altered to make the program work. Seventy percent (70%) of the letters said the patronage capital limitations discriminate against the cooperative lenders and should be removed. Seventy percent (70%) also reported that the Federal Institutions Reform, Recovery and Enforcement Act (FIRREA) requirements, as presented in the proposed rule would make cooperative lenders ineligible for this program. Sixty-five percent (65%) requested that the 15-year bond term limit be changed to the useful life of the asset. This change in term would serve to maximize funding available to REDLG. Fifteen percent (15%) of the letters suggested that the approval process that includes Office of Management and Budget and Treasury, is complicated and inefficient and 10 percent or less critized using a bankruptcy trust fund, collateral provisions, and the requirement that bonds must be issued by Federal Financing Bank (FFB) only.

Thirteen letters were received that did not take the form of the others and either addressed the specific questions posed in the proposed rule or provided additional information for the development of the final rule.

In their comment letters, the U.S. Chamber of Commerce and Edison Electric Institute (EEI) state that Federal guarantees made to private unregulated organizations is unprecedented and bad government policy. Their position is that because of the legislative requirement to establish this program, RUS must also establish appropriate safeguards that minimize risk to American taxpayers. Four trade organizations also supported strengthening the rule requirements and characterized the program as providing an unfair advantage to cooperatives. This unfair advantage would be realized, they argue, through lower rates received in borrowing from an eligible lender that received a guarantee or by receiving REDLG funds and establishing economic development projects that attract new loads into a cooperative territory. The comments received from these groups also identified specific aspects of the proposed rule that they thought should be strengthened in order to minimize taxpayer risk.

The National Rural Electric Cooperative Association (NRECA), National Rural Utilities Cooperative Finance Corporation (CFC), National Rural Telecommunications Cooperative, an electric cooperative association, and an electric cooperative all identified aspects of the proposed rule that they said did not comport to the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (Farm Bill) legislation establishing this program. The comments claim that the proposed rule does not address the intent of the Congress, which was to create a new funding mechanism for the REDLG program. These comments addressed specific restrictions in the proposed rule and requested that they be removed because they were not consistent with the statute and prevent the lender with the largest volume of concurrent loans from participating in the program.

The two general positions taken in the letters of comment received are (1) the program does not provide enough safeguards for the American taxpayer and the provisions in the proposed rule should be strengthened and (2) the intent of Congress is not carried out with the proposed rule and changes should be made to assure that the REDLG program is funded.

CFC also provided an alternative approach to the restrictions included in the proposed rule. The alternative approach is to establish such safeguards as contemplated in the proposed rule to minimize taxpayer risk by establishing a trigger that would impose them only if the lender that qualifies and is granted a guarantee becomes ineligible (*i.e.,* no longer meets the eligibility criteria established in the legislation). CFC proposed the trigger mechanism to be when the lender's non-guaranteed debt falls below investment grade. At that point, limitations on retiring patronage capital, establishing capital adequacy tests, requiring a bankruptcy remote trust and/or collateral requirements would go into effect.

Changes Made to the Final Rule

A review of the limited legislative history that exists for this provision of the 2002 Farm Bill indicates that the intent of Congress was to establish an additional private funding mechanism for the Rural Economic Development Loan and Grant program. This flow of funds is the cost to qualified lenders for receiving a federal guarantee of bonds and notes according to the statutory criteria established in section 6101 of the Farm Bill.

RUS also agrees that appropriate safeguards must be implemented to assure risk is minimized for the American taxpayers as this program establishes a new relationship between eligible lenders and the Federal government. Furthermore, Congress has established this program by amending the RE Act, and fully expects RUS to continue its prudent guarantee and lending practices. For these reasons, RUS will provide additional requirements of the lender beyond the provisions established in section 6101 of the Farm Bill. Based upon the comments received and additional research into the requirements proposed, the final rule has been modified to maintain the safeguards envisioned in the proposed rule while establishing a program according to the provisions of section 6101 of the Farm Bill.

The statute provides some criteria for establishing lender and guarantee eligibility. The statute, however, does not address requirements to ensure the security of a government guarantee, and there is no indication that RUS should not take prudent steps to address declining credit quality. For these reasons, RUS will establish requirements of the guaranteed lender to ensure the security of the government's guarantee throughout the term of the guarantee.

Patronage Capital limitations. The proposed rule requires that the guaranteed lender not issue cash patronage refunds in excess of five percent of the total patronage refund eligible. Additionally, stock issued as part of the patronage refund shall not be redeemable in cash during the term of the guarantee, and the lender is not allowed to issue dividends on any class of stock during the term of the guarantee. Comments were received in favor of this restriction and some recommended lowering the limitation to two percent of the total patronage refund eligible. Comments were also received reporting that this limitation was not contemplated by the statute, and there is no rationale provided for this restriction. Furthermore, it is pointed out that capping patronage distributions reduces the cash flow of any RUS borrower that is also a borrower of the guaranteed lender and this reduction in cash flow may result in an increase in RUS loan security risk. One hundred and forty eight comments were received reporting that cooperatives depend upon the patronage capital distributions to keep electric rates low and to further invest in rural communities. One comment received expressed a belief that this restriction is unnecessary as capital markets already require financial targets for earnings retention.

RUS will maintain a patronage capital limitation when a guaranteed lender's credit rating on its senior secured debt, without regard to the guarantee, falls below ''A−''. Under such a scenario, the guaranteed lender will be required to limit the patronage capital refunds in excess of five percent of the patronage capital. RUS believes this requirement represents a sound approach to ensuring capital adequacy and in minimizing the risk of default.

FIRREA. The proposed rule requires each applicant to submit a review and certification of the lender's capital adequacy utilizing the capital adequacy standards of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The proposed rule also requires that during the term of the guarantee, a FIRREA review be conducted annually. Comments were received requesting that the full requirements of FIRREA be imposed. Other comments claim the FIRREA requirements as presented in the proposed rule make cooperative lenders ineligible based upon their financial structure. Cooperative lenders have forms of equity not recognized by the formulas utilized under FIRREA. One hundred and fifty comment letters were received expressing a concern that the FIRREA standards do not apply to the cooperative structure and that such a requirement would make cooperatives ineligible for the guarantee program.

RUS agrees that the FIRREA requirement would limit participation in the guarantee program. Upon further review of the FIRREA requirements, and public comment, it has become clear that definitions of liabilities, capital, and risk-based assets under FIRREA do not match the financial structures and business model used by cooperative lenders and cannot directly apply. The majority of the savings institutions subject to the requirements of FIRREA do not have publicly traded debt outstanding, and have had no formal bond ratings assigned. Accordingly, the focus of the credit review for such entities is upon the regulatory accounting standards under which those lenders obtain deposit insurance.

The statutory requirements of this guarantee program rely upon credit evaluations by the rating agencies. Their ratings reflect the ability of the lender to meet its long-term payment obligations based upon the lender's financial positions, managerial skills and other factors. RUS has considered alternative methods of establishing capital adequacy of a guaranteed lender under this program and has evaluated the benefits of establishing financial indicator ratio requirements to accomplish that goal. Based upon the comments received and further review, RUS will rely upon the credit rating agencies and the ongoing review of a lender's financial position as required in other sections of the rule to evaluate adequacy and monitor the financial condition of the program participants.

In addition, RUS will independently monitor publicly available information on a program participant as it becomes available. RUS will use this information to monitor and evaluate the adequacy of the financial condition of program participants.

Bankruptcy Remote Trust. The proposed rule requires the lender, during the term of the guarantee, to establish a bankruptcy remote trust fund capitalized at five percent of the guaranteed amount outstanding. Comments received in favor of additional restrictions favor this requirement and a few suggested increasing the capitalized percentage. Comments were also received with claims that a lender whose securities are investment grade rated is already viewed by the capital markets as adequately capitalized, with sufficient reserves and capital market liquidity. Twenty-two comment letters were received reporting that this requirement

was not contemplated in the Farm Bill and should not be implemented. CFC asserts that in capital markets, bankruptcy-remote trusts are used in non-recourse financing and that all CFC bonds are not non-recourse—any investor in CFC has the right to make a claim against CFC as a corporation.

Although a bankruptcy remote trust fund is a sound risk management tool in many situations, RUS believes that other requirements of this rule are sufficient to ensure the security of the government guarantee, and therefore this particular requirement has been removed.

Collateral Requirements. The proposed rule requires the applicant to provide a description of the specific and identifiable loans comprising the collateral or other pledge securing the guaranteed bonds. While comments were received in support for this idea claiming that this would aid in minimizing taxpayer risk, other comments were received requesting that no such requirement be imposed as it is outside of the statutory criteria. CFC asserts that a collateral requirement is duplicative of the bankruptcy-remote trust requirement.

RUS will maintain this requirement when the guaranteed lender's credit rating on its senior secured debt, without regard to the guarantee, falls below ''A−''. In such cases, collateral shall be in the form of specific and identifiable unpledged securities equal to 100% of the value of the guarantee. This requirement is viewed as an important safeguard for protecting against a call on the Federal guarantee when the lender's creditworthiness has declined.

15-year bond term. The proposed rule requires a final maturity of guaranteed bonds not to exceed 15 years. Some comment letters received claim this restriction will aid in minimizing taxpayer risk. Other comments urged RUS to continue its practice of matching terms to the useful life of an asset. One hundred and thirty-nine comment letters received urged the restriction to be lifted recognizing the normal RUS lending practice of 30–35 year terms and also stating that the longer terms would extend the funding to REDLG and maximize economic development benefits to rural America. CFC claims that the limitation on maturity of bonds is inconsistent with the intent of the statute. The limitation exposes the government to additional risks (bond term/borrowers loan maturity mismatch can create both interest rate and liquidity risk).

Based upon comment letters received and the desire to establish a bond or note guarantee term consistent with RUS lending practices, RUS will establish a term of 20 years which is the estimated average outstanding balance of concurrent loans currently eligible under this program.

FFB only funding source. The proposed rule requires that the guaranteed bonds must be issued to the FFB on terms and conditions consistent with the FFB lending policy. Nineteen comment letters were received expressing concern with this limitation. CFC argues that this is inconsistent with a provision in the statute providing that the guarantees ''shall be fully assignable and transferable'' indicating that they could be issued in the capital markets. The rule also does not require FFB to purchase the offering and it does not discuss the rates, terms, or options for the transaction between the lender and FFB. CFC requests that flexibility be provided to issue the bonds to FFB or in the capital market to maximize the benefit.

RUS understands the CFC argument that the ''best deal'' should be obtained in issuing a bond or not for a guarantee. Therefore, the final rule requires that the guaranteed bond or note be issued to FFB on terms and conditions consistent with comparable government-guaranteed bonds and satisfactory to the Secretary.

Approval requirements to include Office of Management and Budget (OMB) and U.S. Department of Treasury. The proposed rule requires an independent assessment of the application by OMB and FFB prior to a decision on the guarantee being made by the Secretary. Thirty-five (35) comments were received claiming that this is neither needed nor efficient. Other comments suggest that there is no statutory requirement for this process.

RUS is eliminating the requirement that FFB and OMB review the application. Instead, RUS is required to request that FFB review the credit rating of the bond or note to be issued. The expertise that FFB possesses will help to ensure the security of the government guarantee.

Regulatory Procedures Issues

Comments received from the U.S. Chamber of Commerce and one individual suggest that the United States Department of Agriculture did not follow the appropriate procedures in promulgated the proposed rule. RUS has considered these comments and believes they are without merit. For example, RUS has complied with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) by determining that because the procedures contained in the proposed rule apply to only two entities, neither of whom are small, the rule will have no significant impact on small businesses or other small entities. The use of the word ''determine'' in context in which it was used in the published notice that was signed by the head of the agency is synonymous with the word ''certify'' within means ''to confirm formally as true.'' Since RUS certifies that there is no substantial impact on a significant number of small entities, the balance of the comments received on the Regulatory Flexibility Act are inapposite and in any event have more to do with the effects of programs which section 313A funds and which were not the subject of the proposed rulemaking.

Commenters have not correctly applied National Environmental Protection Act (NEPA) implementation regulations of RUS. As authority for their proposition that the proposed rule was subject to a full environmental review involving the public, commenters cited 7 CFR 1794.3. That provision provides merely that the provisions of 7 CFR part 1794 apply to, inter alia, the issuance of new or revised rules. However, Title 7 part 1794 does not require environmental reviews or public participation in such reviews in all cases. The provisions of 7 CFR part 1794 identify and establish categories of actions for environmental review purposes. These categories range from actions that are categorically exempt to those normally requiring the development of an environmental impact statement. RUS regulations do not require the agency to publish a Finding of No Significant Impact (FONSI) each time RUS determines that an action will not have a significant environmental impact. RUS regulations require the publication of a FONSI only when its determination has been made on the basis of an Environmental Assessment (EA). Generally speaking, publications of regulations do not require an EA. It is only the issuance or modification of RUS regulations concerning environmental matters that are listed in 7 CFR part 1794 as normally requiring an EA (7 CFR 1794.23(a)). Accordingly, the discussion of NEPA in the proposed rule complied with NEPA and RUS regulations implementing NEPA.

RUS was not, as some commenters wrote, required to prepare a Statement of Energy Effects to comply with Executive Order (E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''. However, E.O. 13211 does not require the preparation of such statements in connection with every proposed rulemaking that is a

significant regulatory action under E.O. 12866 as the commenters seem to imply. while it is correct that in order for a proposed rule to be a ''significant energy action'' under E.O. 13211, the proposal must be a ''significant regulatory action'' under Executive Order 12866, at least one of two other requirements must be met before the obligation to prepare a statement of energy effects exists. The propose rule must either be ''likely to have significant adverse effect on the supply, distribution, or use of energy'' or it must be so ''designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' E.O. 13211 sections 2(a) and 4(b). Neither of these two factors are present here. Since E.O. 13211 does not apply to the proposed rule, there is no need to address comments about what such an analysis should provide.

Some commenters wrote that the proposed rule did not meet the requirement under Executive Order 12866, ''Regulatory Planning and Review'', requiring all ''significant regulatory actions'' by Federal agencies to undergo cost-benefit assessment by the agency and centralized review by the Office of Information and Regulatory Affairs (OIRA), an organizational subunit of the OMB. RUS did conduct the appropriate regulatory analysis required for issuing the proposed rule to establish this Guarantee of Bonds and Notes program. RUS has provided the appropriate studies and justifications to OIRA for centralized review and the necessary OMB clearances were obtained before publishing the proposed rule and this final rule in the **Federal Register.**

RUS received a few comments to the effect that RUS did not provide adequate opportunity for public participation during the development of the proposed rule and suggesting that the comment period for the proposed rule be extended. RUS believes that there has been ample opportunity for public participation and that any further delays in implementing the program cannot be justified. Section 313A amending the rural Electrification Act of 1936 (7 U.S.C. 940c–1) was signed into law on May 13, 2002. Pub. L. 107–171, Title VI, sec. 6101(a). There are directives in sec. 6101(b) of Pub. L. 107–171 requiring the promulgation of regulations within 180 days of enactment and to implement the program within 240 days. Accordingly, enactment of Section 313A gave notice that rules covering this subject matter would soon be forthcoming. Section 313A itself established many of the program requirements contained in the proposed rule and clearly signaled the principal areas that would be addressed by the program. RUS provided 60 days for comments on the proposed regulations. Perhaps the best evidence demonstrating the adequacy of the public's opportunity for participation in the proposed rulemaking is the fact that RUS received 231 written comments in response to the notice.

List of Subjects in 7 CFR Part 1720

Electric power, Electric utilities, Loan program—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 adding a new part 1720 to read as follows:

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

Sec.

1720.1 Purpose.
1720.2 Background.
1720.3 Definitions.
1720.4 General standards.
1720.5 Eligibility criteria.
1720.6 Application process.
1720.7 Application evaluation.
1720.8 Issuance of the guarantee.
1720.9 Guarantee Agreement.
1720.10 Fees.
1720.11 Servicing.
1720.12 Reporting requirement.
1720.13 Limitations on guarantees.
1720.14 Nature of guarantee; acceleration of guaranteed bonds.
1720.15 Equal opportunity requirements.

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

§ 1720.1 Purpose.

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

§ 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 became law on May 13, 2002, and directs the Secretary of Agriculture to promulgate regulations that carry out the Program.

§ 1720.3 Definitions.

For the purpose of this part:

Administrator means the Administrator of RUS.

Applicant means a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis, that is applying for RUS to guarantee a bond or note under this part.

Bond Documents means the trust indenture, bond resolution, guarantee, guarantee agreement and all other instruments and documentation pertaining to the issuance of the guaranteed bonds.

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 seeking such financing.

Concurrent Loan means a loan that a guaranteed lender extends to a borrower for up to 30 percent of the cost of an eligible electrification or telephone purpose under the RE Act, concurrently with an insured loan made by the Secretary pursuant to section 307 of the RE Act.

Federal Financing Bank (FFB) means a government corporation and instrumentality of the United States of America under the general supervision of the Secretary of the Treasury.

Guarantee means the written agreement between the Secretary and a guaranteed bondholder, pursuant to which the Secretary guarantees full repayment of the principal, interest, and call premium, if any, on the guaranteed lender's guaranteed bond.

Guarantee Agreement means the written agreement between the Secretary and the guaranteed lender which sets forth the terms and conditions of the guarantee.

Guaranteed Bond means any bond, note, debenture, or other debt obligation issued by a guaranteed lender on a fixed

or variable rate basis, and approved by the Secretary for a guarantee under this part.

Guaranteed Bondholder means any investor in a guaranteed bond.

Guaranteed Lender means an applicant that has been approved for a guarantee under this part.

Loan means any credit instrument that the guaranteed lender extends to a borrower for any electrification or telephone purpose eligible under the RE Act, including loans as set forth in section 4 of the RE Act for electricity transmission lines and distribution systems (excluding generating facilities) and as set forth in section 201 of the RE Act for telephone lines, facilities and systems.

Loan documents means the loan agreement and all other instruments and documentation between the guaranteed lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of a loan.

Program means the guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the RE Act as amended.

Rating Agency means a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization.

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) as amended.

RUS means the Rural Utilities Service, a Rural Development agency of the U.S. Department of Agriculture.

Secretary means the Secretary of Agriculture acting through the Administrator of RUS.

Subsidy Amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal government of a guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on government receipts or outlays, in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et. seq.)

§ 1720.4 General standards.

(a) In accordance with section 313A of the RE Act, a guarantee will be issued by the Secretary only if the Secretary determines, in accordance with the requirements set forth in this part, that:

(1) The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for electrification or telephone purposes eligible for assistance under this chapter, or to refinance bonds or notes previously issued by the guaranteed lender for such purposes;

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding concurrent 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 the program to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in 7 CFR part 1710, of this chapter.

(b) During the term of the guarantee, the guaranteed lender shall:

(1) Limit cash patronage refunds, for guaranteed lenders having a credit rating below ''A−'' on its senior secured debt without regard to the guarantee. For such guaranteed lenders, cash patronage refunds are limited to five percent of the total patronage refund eligible. The limit on patronage refunds must be maintained until the credit rating is restored to ''A−'' or above. For those guaranteed lenders subject to patronage limitations, equity securities issued as part of the patronage refund shall not be redeemable in cash during the term of any part of the guarantee, and the guaranteed lender shall not issue any dividends on any class of equity securities during the term of the guarantee.

(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. 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 without regard to the guarantee fall below ''A−''. The Secretary has discretion to require collateral at any time should circumstances warrant.

(c) The final maturity of the guaranteed bonds shall not exceed 20 years.

(d) The guaranteed bonds shall be issued to the Federal Financing Bank on terms and conditions consistent with comparable government-guaranteed bonds and satisfactory to the Secretary.

(e) The Secretary shall guarantee payment son guaranteed bonds in such forms and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as determined appropriate for satisfying the requirements of this part. The Secretary shall require the guaranteed lender to enter into a guarantee agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

§ 1720.5 Eligibility criteria.

(a) To be eligible to participate in the program, a guaranteed lender must be:

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

(2) Able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

(b) To be eligible to receive a guarantee, a guaranteed lender's bond must meet the following criteria:

(1) The guaranteed leader must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing 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

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee;

(c) A lending institution's status as an eligible applicant does not assure that the Secretary will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Secretary from declining to issue a guarantee.

§ 1720.6 Application process.

(a) Applications shall contain the following:

(1) Background and contact information on the applicant;

(2) A term sheet summarizing the proposed terms and conditions of, and the security pledged to assure the applicant's performance under, the guarantee agreement;

(3) A statement by the applicant as to how it proposes to use the proceeds of

the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program;

(4) A pro-forma cash flow projection or business plan for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed bonds in accordance with their terms;

(5) Consolidated financial statements of the guaranteed lender for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(6) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee;

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

(8) Such other application documents and submissions deemed necessary by the Secretary for the evaluation of applicants.

(b) The application process occurs as follows:

(1) The applicant submits an application to the Secretary;

(2) The application is screened by RUS pursuant to 7 CFR 1720.7(a) of this part, to ascertain its threshold eligibility for the program;

(3) RUS evaluates the application pursuant to the selection criteria set forth in 7 CFR 1720.7(b) of this part;

(4) If RUS provisionally approves the application, the applicant and RUS negotiate terms and conditions of the bond documents, and

(5) The applicant offers its guaranteed bonds, and the Secretary upon approval of the pricing, redemption provisions and other terms of the offering, executes the guarantee.

(c) If requested by the applicant at the time it files its application, the General Counsel of the Department of Agriculture shall provide the Secretary with an opinion regarding the validity and authority of a guarantee issued to the lender under section 313A of the RE Act.

§ 1720.7 Application evaluation.

(a) *Eligibility screening.* Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

(b) *Evaluation.* Pursuant to paragraph (a) of this section, applications will be subject to a substantive review, on a competitive basis, by the Secretary based upon the following evaluation factors, listed in order of importance:

(1) The extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds;

(2) The adequacy of the proposed provisions to protect the Federal government, based upon items including, but not limited to the nature of the pledged security, the priority of the lien position, if any, pledged by the applicant, and the provision for an orderly retirement of principal such as an amortizing bond structure or an internal sinking fund;

(3) The applicant's demonstrated performance of financially sound business practices;

(4) 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, to 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–1(b)(2)(B)), after payment of the subsidy amount.

(c) *Independent Assessment.* Before a guarantee decision is made by the Secretary, the Secretary shall request that the Federal Financing Bank review the adequacy of the determination by the Rating Agency, required under § 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee.

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received. 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.

§ 1720.8 Issuance of the guarantee.

(a) The following requirements must be met by the applicant prior to the endorsement of a guarantee by the Secretary.

(1) A guarantee agreement suitable in form and substance to the Secretary must be delivered.

(2) Bond documents must be executed by the applicant setting forth the legal provisions relating to the guaranteed bonds, including but not limited to payment dates, interest rates, redemption features, pledged security, additional borrowing terms including an explicit agreement to make payments even if loans made using the proceeds of such bond or note is not repaid to the lender, other financial covenants, and events of default and remedies;

(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 eligible new 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 concurrent loans and their outstanding balances as of the date the guarantee is to be issued;

(5) Counsel to the applicant must furnish an opinion satisfactory to the Secretary as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents;

(6) No material adverse change occurs between the date of the application and date of execution of the guarantee;

(7) The applicant shall provide evidence of an investment grade rating from a Rating Agency for the proposed guaranteed bond without regard to the guarantee;

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

(9) Certification by the Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary), acknowledging the applicant's commitment to submit to the Secretary, an annual credit assessment of the applicant by a Rating Agency, an annual review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, annual consolidated financial statements audited by an independent certified public accountant each year during which the guarantee bonds are outstanding, and other such information requested by the Secretary.

(b) The Secretary shall not issue a guarantee if the applicant is unwilling or unable to satisfy all requirements.

§ 1720.9 Guarantee Agreement.

(a) The guaranteed lender will be required to sign a guarantee agreement with the Secretary setting forth the

terms and conditions upon which the Secretary guarantees the payment of the guaranteed bonds.

(b) The guaranteed bonds shall refer to the guarantee agreement as controlling the terms of the guarantee.

(c) The guarantee agreement shall address the following matters:

(1) Definitions and principles of construction;

(2) The form of guarantee;

(3) Coverage of the guarantee;

(4) Timely demand for payment on the guarantee;

(5) Any prohibited amendments of bond documents or limitations on transfer of the guarantee;

(6) Limitation on acceleration of guaranteed bonds;

(7) Calculation and manner of paying the guarantee fee;

(8) Consequences of revocation of payment on the guaranteed bonds;

(9) Representations and warranties of the guaranteed lender;

(10) Representations and warranties for the benefit of the holder of the guaranteed bonds;

(11) Claim procedures;

(12) What constitutes a failure by the guaranteed lender to pay;

(13) Demand on RUS;

(14) Assignment to RUS;

(15) Conditions of guarantee which may include requiring the guaranteed lender to adopt measures to ensure adequate capital levels are retained to absorb losses relative to risk in the guaranteed lender's portfolio and requirements on the guaranteed lender to hold additional capital against the risk of default;

(16) Payment by RUS;

(17) RUS payment does not discharge guaranteed lender;

(18) Undertakings for the benefit of the holders of guaranteed bonds, including: notices, registration, prohibited amendments, prohibited transfers, indemnification, multiple bond issues;

(19) Governing law;

(20) Notices;

(21) Benefit of agreement;

(22) Entirety of agreement;

(23) Amendments and waivers;

(24) Counterparts;

(25) Severability, and

(26) Such other matters as the Secretary believes to be necessary or appropriate.

§ 1720.10 Fees.

(a) *Guarantee fee.* An annual fee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guarantee bond will be deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act.

(b) Subject to paragraph (c) of this section, up to one-third of the 30 basis point guarantee fee may be used to fund the subsidy amount of providing guarantees, to the extent not otherwise funded through appropriation actions by Congress.

(c) Notwithstanding subsections (c) and (e)(2) of section 313A of the RE Act, the Secretary shall, with the consent of the lender and if otherwise authorized by law, adjust the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees.

§ 1720.11 Servicing.

The Secretary, or other agent of the Secretary on his or her behalf, shall have the right to service the guaranteed bond, and periodically inspect the books and accounts of the guaranteed lender to ascertain compliance with the provisions of the RE Act and the bond documents.

§ 1720.12 Reporting requirements.

(a) As long as any guaranteed bonds remain outstanding, the guaranteed lender shall provide the Secretary with the following items each year within 90 days of the guaranteed lender's fiscal year end:

(1) Consolidated financial statements and accompanying footnotes, audited by independent certified public accountants;

(2) A review and certification of the security of the government guarantee, audited by reputable, independent certified public accountants or a federal banking regulator, who in the judgment of the Secretary, has the requisite skills, knowledge, reputation, and experience to properly conduct such a review;

(3) Pro forma projection of the guaranteed lender's balance sheet, income statement, and statement of cash flows over the ensuing five years;

(4) Credit assessment issued by a Rating Agency;

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

(6) Other such information requested by the Secretary.

(b) The bond documents shall specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

§ 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 principle amount of outstanding concurrent 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.

§ 1720.14 Nature of guarantee; acceleration of guaranteed bonds.

(a) Any guarantee executed by the Secretary under this part shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the guaranteed bondholder had actual knowledge at the time it purchased the guaranteed bonds.

(b) Amounts due under the guarantee shall be paid within 30 days of demand by a bondholder, certifying the amount of payment then due and payable.

(c) The guarantee shall be assignable and transferable to any purchaser of guaranteed bonds as provided in the bond documents.

(d) The following actions shall constitute events of default under the terms of the guarantee agreements:

(1) The guaranteed lender failed to make a payment of principal or interest when due on the guaranteed bonds;

(2) The guaranteed bonds were issued in violation of the terms and conditions of the bond documents;

(3) The guarantee fee required by 7 CFR 1720.10 of this part, has not been paid;

(4) The guaranteed lender made a misrepresentation to the Secretary in any material respect in connection with the application, the guaranteed bonds, or the reporting requirements listed in 7 CFR 1720.12; or

(5) The guaranteed lender failed to comply with any material covenant or provision contained in the bond documents.

(e) In the event the guaranteed lender fails to cure such defaults within the notice terms and the timeframe set forth in the bond documents, the Secretary may demand that the guaranteed lender redeem the guaranteed bonds. Such redemption amount will be in an amount equal to the outstanding principal balance, accrued interest to the date of redemption, and prepayment premium, if any. To the extent the Secretary makes any payments under the guarantee, the Secretary shall be deemed the guaranteed bondholder.

(f) To the extent the Secretary makes any payments under the guarantee, the interest rate the government will charge to the guaranteed lender for the period

of default shall accrue at an annual rate of the greater of 1.5 times the 91-day Treasury-Bill rate or 200 basis points (2.00%) above the rate on the guaranteed bonds.

(g) Upon guaranteed lender's event of default, under the bond documents, the Secretary shall be entitled to take such other action as is provided for by law or under the bond documents.

§ 1720.15 Equal opportunity requirements.

Executive Order 12898, ''Environmental Justice.'' To comply with Executive Order 12898, RUS will conduct a Civil Rights Analysis for each guarantee prior to approval. Rural Development Form 2006–28, ''Civil Rights Impact Analysis'', will be used to document compliance in regards to environmental justice. The Civil Rights Impact Analysis will be conducted prior to application approval or a conditional commitment of guarantee.

Dated: October 26, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04–24353 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18582; Directorate Identifier 2003–NM–35–AD; Amendment 39–13831; AD 2004–22–03]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 and –145 series airplanes. This AD requires measuring the fillet radius dimension of the trunnion fitting webs of the wings; and reworking the fillet radius of the trunnion fitting web in order to increase the radius, doing related investigative actions, and doing applicable corrective action, if necessary. This AD is prompted by a report indicating that trunnion fittings of the wings have been manufactured with a web fillet radius smaller than the minimum required by the design data, which may induce the occurrence of fatigue cracks at the root of the trunnion fillet radius and adjacent structures (*e.g.*, spar and ribs). We are issuing this AD to detect and correct fatigue cracking of the wing trunnion fittings or adjacent structure, which could result in failure of the main landing gear, consequent damage to surrounding structure, and possible loss of control of the airplane during landing.

DATES: This AD becomes effective December 3, 2004.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the **Federal Register** as of December 3, 2004.

ADDRESSES: For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT:

Technical information: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain EMBRAER Model EMB–135 and –145 series airplanes. The proposed AD was published in the **Federal Register** on July 13, 2004 (69 FR 41994), to require measuring the fillet radius dimension of the trunnion fitting webs of the wings; and reworking the fillet radius of the trunnion fitting web in order to increase the radius, doing related investigative actions, and doing applicable corrective action, if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 60 airplanes of U.S. registry. The measurement will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $7,800, or $130 per airplane.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.