

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business—Cooperative Service

### Rural Utilities Service

### Farm Service Agency

#### 7 CFR Part 1942

RIN 0570-AA36

#### Rural Business Enterprise Grants and Television Demonstration Grants; Definition of “Rural Area” and New Types of “Eligible Small and Emerging Private Business Enterprises”

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Rural Business—Cooperative Service (RBS) is amending the Rural Business Enterprise Grant (RBEG) Program regulation by revising the definition of rural area to comply with the amendment to section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) made by section 6020 of the Farm Security and Rural Investment Act of 2002. The intended effect of this action is to provide a consistent definition of rural and rural area for programs administered under the Rural Community Advancement Program. RBS will be adding nonprofit entities and other tax-exempt organizations as eligible small and emerging private business enterprises under certain circumstances to comply with the amendment to section 310B(c)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)) made by Section 6014 of the Farm Security and Rural Investment Act of 2002. The intended effect of this action is to give priority to the newly

authorized small and emerging private business enterprises.

**EFFECTIVE DATE:** December 20, 2002.

Comments must be received on or before February 18, 2003.

**ADDRESSES:** Submit written comments via U.S. Postal Service, in duplicate, to the Regulations and Paperwork Management Branch, Attention Cheryl Thompson, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742. Submit written comments via Federal Express, in duplicate, to the Regulations and Paperwork Management Branch, Attention Cheryl Thompson, U.S. Department of Agriculture, Rural Development, 300 7th Street SW., 7th Floor, Washington, DC 20024. Comments may be submitted via the Internet by addressing them to [comments@rus.usda.gov](mailto:comments@rus.usda.gov) and must contain the word “rural” in the subject. All written comments will be available for public inspection during normal working hours at the 300 7th Street SW., address listed above.

**FOR FURTHER INFORMATION CONTACT:** Amy Cavanaugh, Rural Development Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW., Washington, DC 20250-3225, Telephone (202) 690-2516. The TDD number is (800) 877-8339 or (202) 708-9300.

#### SUPPLEMENTARY INFORMATION:

##### Classification

This rule has been determined to be non-significant under Executive Order 12866.

##### Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.769, Rural Development Grants.

##### Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this interim final rule.

##### Intergovernmental Review

The RBEG Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS will conduct

intergovernmental consultation in the manner delineated in RD Instruction 1940-J, “Intergovernmental Review of Rural Development Programs and Activities,” and in the notice related to 7 CFR part 3015, subpart V (48 FR 29112, June 24, 1983).

##### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

##### Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

##### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, “Environmental Program.” RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

##### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS 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 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

#### Executive Order 13132, Federalism

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### Background

This regulatory package is an initiative mandated from Congress to revise the definition of rural area and add nonprofit entities and other tax-exempt organizations as eligible small and emerging private business enterprises when certain conditions exist. Section 6020 of the Farm Security and Rural Investment Act of 2002, Public Law 107-424, amended section 343(a) of the Consolidated Farm and Rural Development (ConAct) to change the definition of rural area for several programs authorized under that Act, including the RBEG Program. Section 343(a)(13) of the ConAct provides, in part, as follows:

(13) Rural and Rural Area—

(A) In General.—Except as otherwise provided in this paragraph, the terms ‘rural’ and ‘rural area’ mean any area other than—

(i) A city or town that has a population of greater than 50,000 inhabitants; and

(ii) The urbanized area contiguous and adjacent to such a city or town.

The revised definition in Section 343(a) of the ConAct supersedes the current definition for rural area used for the RBEG Program. The current definition includes “all territory of a State that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and

urbanizing areas with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.” The new definition in Section 343(a)(13) expands eligibility to include urbanizing areas; adds “town” to an area which can have a population of 50,000 or more; and deletes the requirement that the urbanized area be “immediately” adjacent to the city, requiring only that it be “contiguous and adjacent” to the city or town. Cities or towns with populations greater than 50,000 inhabitants and the urbanized area, which is contiguous and adjacent to such cities and towns, are ineligible for the RBEG Program. This revision is intended to help the Agency simplify the rural area eligibility determination process and provide a consistent definition of rural area for programs administered by RBS under the Rural Community Advancement Program.

Congress also added nonprofit entities and other tax-exempt organizations as eligible small and emerging private business enterprises under certain circumstances. The end result of a project funded under the RBEG Program must finance or develop a small and emerging private business enterprise. A small and emerging private business enterprise is defined as a business that has no more than 50 new employees and has less than \$1 million in gross revenues. Under the new legislation, if the small and emerging private business enterprise is a nonprofit entity or other tax-exempt organization located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation, it is exempt from meeting the small and emerging private business enterprise definition previously discussed. In addition, it is intended for these types of business enterprises to receive additional priority points for funding.

#### Discussion of Interim Final Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, it would be contrary to the public interest to wait for public comment before implementing the mandated Act. Comments will be accepted for 60 days after publication of this interim final rule and will be considered in the development of the final rule.

#### List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

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

#### PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 1932, 7 U.S.C. 1989, and 16 U.S.C. 1005.

#### Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

2. Amend § 1942.304 to revise the definition of “rural and rural area” and remove the definitions of “urbanized area” and “urbanizing area” to read as follows:

#### § 1942.304 Definitions.

\* \* \* \* \*

*Rural and Rural Area.* Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

\* \* \* \* \*

3. Amend § 1942.305 as follows: a. Revise paragraph (a);

b. Add a new paragraph (b)(3)(iv)(G). The revision and addition read as follows:

#### § 1942.305 Eligibility and priority.

(a) *Eligibility.* (1) RBE grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include States, counties, cities, townships, and incorporated town and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas.

(2) The end result of the project must finance or develop a small and emerging private business enterprise. The small business receiving assistance must meet the definition contained in § 1942.304. However, if the small and emerging private business enterprise is an eligible nonprofit entity or other tax-exempt organization located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation, the small and emerging private business

enterprise is exempt from meeting the definition contained in § 1942.304.

(3) Regional Commission Grant applicants must meet eligibility requirements of the Regional Commission and also of the Agency, in accordance with paragraph (a)(1) of this section, for the Agency to administer the Regional Commission Grant under this subpart.

(4) Television demonstration grants may be made to statewide, private, nonprofit, public television systems whose coverage is predominantly rural. An eligible applicant must be organized as a private, nonprofit, public television system, licensed by the Federal Communications Commission, and operated statewide and within a coverage area that is predominantly rural.

(b) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(G) The project will assist a small and emerging private business enterprise as described in § 1942.305 (a)(2) of this subpart—10 points.

\* \* \* \* \*

Dated: December 13, 2002.

**Thomas C. Dorr,**

*Under Secretary.*

[FR Doc. 02-32050 Filed 12-19-02; 8:45 am]

BILLING CODE 3410-XV-U

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Parts 506, 559, 562, and 563

[No. 2002-64]

RIN 1550-AB55

#### Savings Associations—Transactions with Affiliates

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Office of Thrift Supervision (OTS) is revising its regulations on transactions with affiliates. This interim final rule conforms OTS regulations to the Board of Governors of the Federal Reserve System (FRB) final rule implementing sections 23A and 23B of the Federal Reserve Act (FRA). The FRB rule (Regulation W) combines statutory restrictions on transactions with affiliates with new and existing interpretations and exemptions.

**DATES:** This interim final rule is effective April 1, 2003. Comments must

be received on or before February 18, 2003.

**ADDRESSES:** *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2002-64. Commenters should be aware that there have been unpredictable and lengthy delays in postal deliveries to the Washington, DC area in recent weeks and may prefer to make their comments via facsimile, e-mail, or hand delivery.

*Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, No. 2002-64.

*Facsimiles:* Send facsimile transmissions to FAX Number (202) 906-6518, Attention: No. 2002-64.

*E-Mail:* Send e-mails to [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov), Attention: No. 2002-64, and include your name and telephone number.

*Availability of comments:* OTS will post comments and the related index on the OTS Internet Site at [www.ots.treas.gov](http://www.ots.treas.gov). In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

**FOR FURTHER INFORMATION CONTACT:**

Karen A. Osterloh, Special Counsel, (202) 906-6639, Regulations and Legislation Division, Chief Counsel's Office, or Donna Deale, Manager, (202) 906-7488, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 11(a)(1) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1468(a)(1)) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c-1) to every savings association "in the same manner and to the same extent" as if the savings association were a member bank of the Federal Reserve System.

Section 23A of the FRA imposes three major limitations on a member bank's (and its subsidiaries') transactions with affiliates. First, section 23A limits the amount of "covered transactions" with

any single affiliate to no more than 10 percent of the member bank's capital stock and surplus. Covered transactions with all affiliates are limited to no more than 20 percent of the member bank's capital stock and surplus. A covered transaction includes a loan or extension of credit to an affiliate, a purchase of or investment in securities issued by an affiliate, a purchase of assets from an affiliate, the acceptance of securities issued by an affiliate as collateral security for a loan or extension of credit to any person or company, and the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.

Second, section 23A requires that all covered transactions between a member bank and its affiliates be on terms and conditions that are consistent with safe and sound banking practices and prohibits a member bank from purchasing low-quality assets from an affiliate. Finally, section 23A requires that a member bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B of the FRA protects member banks by requiring that transactions between the bank and its affiliates occur on market terms—on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies to covered transactions under section 23A, as well as other transactions, such as the sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate. Section 23B also prohibits certain purchases and acquisitions of securities by a member bank or its subsidiary subject to certain conditions, and prohibits certain advertisements or agreements that state or suggest that the member bank is responsible for the obligations of its affiliates.

In addition to the section 23A and 23B restrictions, section 11(a)(1) of the HOLA imposes two prohibitions on savings associations. First, a savings association may not make a loan or other extension of credit to any affiliate unless that affiliate is engaged only in activities that a bank holding company may conduct. In addition, no savings association may purchase or invest in securities issued by an affiliate, other than with respect to shares of a subsidiary. Section 11(a)(4) of the HOLA authorizes OTS to impose such additional restrictions on any transaction between a savings association and any affiliate as it