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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572-AC24

Expansion of 911 Access; Telecommunications Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to implement the Expansion of 911 as authorized by section 6107 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). This amendment will codify the Secretary's authority to make loans in five areas of eligibility to expand or improve 911 access and integrated emergency communications systems in rural areas for the Telecommunications Loan Program.

DATES: This rule is effective on September 12, 2011. Comments must be submitted on or before November 14, 2011.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow instructions for submitting comments.

- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA—Rural Utilities Service, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250-1522.

Other Information: Additional information about the Agency and its programs is available on the Internet at <http://www.rurdev.usda.gov/index.html>.

FOR FURTHER INFORMATION CONTACT:

David Villano, Assistant Administrator, Telecommunications Program, USDA—

Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1590, Room 5151-S, Washington, DC 20250-1590. Telephone number: (202) 720-9554, Facsimile: (202) 720-0810.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.851, Rural Telephone Loans and Loan Guarantees. The Catalog is available on the Internet at <http://www.cfda.gov>.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a 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).

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule are approved under OMB control number 0572-0079. This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572-0079 that would require approval under the Paperwork Reduction Act of 1955 (44 U.S.C. chapter 35).

National Environmental Policy Act Certification

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

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, the Agency has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in § 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Unfunded Mandates

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

Executive Order 13132, Federalism

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Over the last year, the Agency has conducted extensive Tribal consultations related to the implementation of the Substantially Underserved Trust Area (SUTA) provisions of the 2008 Farm Bill. During those consultations all RUS programs were discussed. Expanded emergency communications capabilities were among the issues brought up in the consultations. A specific regulation on SUTA is being prepared. Tribal entities are fully eligible to apply for financing under this provision and nothing under this regulation would affect SUTA eligibility.

The policies contained in this rule do not impose substantial unreimbursed compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law.

E-Government Act Compliance

The Agency 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.

Discussion of Interim Rule

This interim rule codifies section 6107 of the 2008 Farm Bill. Section 6107 amended the Rural Electrification Act of 1936 (7 U.S.C. 940e) to allow for the financing of facilities to expand emergency 911 access in rural areas. The statutory language is very prescriptive, defining eligible entities, financing purposes, and loan terms and security requirements. As such, the amendments to 7 CFR part 1735 simply incorporate those statutory requirements within the regulatory framework prescribing requirements for the telecommunications loan programs. Therefore, it is not necessary to issue a proposed rule since the codification represents a strict implementation of the statutory requirements.

Background

A. Introduction

The Agency improves the quality of life in rural America by providing investment capital for deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian Tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal

of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nationwide telecommunications network. With access to the same advanced telecommunications networks as its urban counterparts, especially broadband networks designed to accommodate distance learning, telework, and telemedicine, rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Agency shares the assessment of Congress, State and local officials, industry representatives, and rural residents that broadband service is a critical component to the future of rural America and modern emergency communications capabilities are critical to the safety and security of all Americans. The Agency is committed to ensuring that rural America will have access to affordable, reliable, telecommunications and broadband services and to provide a healthy, safe, and prosperous place to live and work.

B. Regulatory History

Following the September 11, 2001, attacks on the United States, significant Congressional attention was placed on weaknesses in the nation's emergency communications capabilities. The ability of rural communities, carriers and emergency responders to keep up with changing communications technologies was and continues to be a concern of emergency response professionals. Interoperability, which is the ability of emergency responders from various agencies and jurisdictions to communicate with each other, is also a pressing national need.

In 2002, the Congress gave the RUS statutory authority to "to expand or improve 911 access and integrated emergency communications systems in rural areas" in section 315 of the RE Act (6102 of the 2002 Farm Security and Rural Investment Act of 2002). No regulations were ever proposed to implement that section.

In 2008, the Congress re-authorized section 315 of the RE Act and added language to further define eligible loan purposes. It also clarified that projects could be funded from appropriations made to the RUS telecommunications program.

In 2011, the President launched a major initiative to use wireless 4G technology to create a nation-wide interoperable emergency communications network. The plan contemplates using dual-use 4G wireless technologies in rural areas to

address public safety and private sector communications needs.

Rural areas face significant challenges in deploying emergency communications systems. The 911 Program Office housed within the National Transportation Safety Administration specifically noted that "(r)ural and Tribal 911 centers face special challenges. They typically serve areas that are large geographically but less-densely populated than urban areas. Because it may take first responders longer to reach the scene of an emergency, call-takers in public safety answering points (PSAPs) serving rural areas may be required to stay on the phone longer with callers or provide more extensive emergency instruction to callers until help arrives. And in medical emergencies, hospitals are often farther away which results in extended transport times, making the ambulance unavailable for other calls in its response area in areas that may have very limited coverage. The responder resources are typically limited in rural areas which can be quickly overwhelmed in disasters or large-scale incidents. The program office went on to observe that "supporting rural PSAPs is vitally important, particularly because it may take longer for help to arrive in rural areas, and the call-taker may make an even bigger difference in the outcome of an emergency situation." (see <http://www.911.gov/911-issues/challenges.html>)

The sixty-minute period immediately following a traumatic injury, like an injury resulting from a car crash is known as the "golden hour." The risks of death or permanent injury increase dramatically if medical attention is not given within that first hour. In rural America, distance and sparse population work against the quick discovery and treatment of injuries resulting from an individual or mass emergency. In rural areas the ability to reach a person in distress can be the difference between life and death or recovery and disability.

Congress twice enacted section 315 to give the RUS flexible financial tools to help rural communities, service providers and governmental entities address their emergency communications needs. By giving clear loan authority to the agency, RUS would have the tools to: (a) Leverage public and private resources to speed the rural deployment of a dual-use public safety/commercial wireless network; (b) address homeland security communications needs along America's rural international borders; (c) finance enhanced 911 capabilities for carriers and communities to precisely locate a

rural wireless call to 911; and (d) to finance next-generation 911 upgrades, which would allow citizens to contact 911 via text message or send to emergency responders cell phone photos or short videos of a crime scene or accident location. The E911 location accuracy requirements pose unique challenges for rural wireless carriers. The new authority would give the Agency clear authority to finance wireless upgrades which relate to public safety and security, even if it does not finance the entire wireless communications systems.

Without this authority, RUS would be very limited in its ability to make financing available to address specific rural emergency communications needs. Without this authority, the RUS telecommunications statute would generally prohibit the Agency from financing municipal investments.

As a loan program which must meet the rigorous financial and engineering feasibility requirements, the Agency expects no impact on its subsidy rate.

RUS has conducted extensive Tribal consultations in 2010 and 2011 related to implementation of new authorities for substantially underserved trust areas. Through those consultations, the Agency had discussions with Tribal leaders on the entire portfolio of RUS programs. This authority could be useful in addressing some of the emergency communications needs raised by Tribal leaders in some of those discussions. Tribal areas are among the regions of the United States with the least connectivity to 911 and other emergency communications systems.

The regulation would simply codify the authority contained in section 315 of the RE Act.

C. Rule Changes

The amendment to 7 CFR Part 1735 implements section 315 of the Rural Electrification Act of 1936 (RE Act) as provided in section 6107 of the Food, Conservation, and Energy Act of 2008 by clarifying that the expansion of 911 access & integrated interoperable emergency communications systems are eligible purposes of the RE Act.

Section 6107 of the Food, Conservation, and Energy Act of 2008 added section 315 of RE Act to clearly authorize the RUS to make loans for the following purposes:

- (1) 911 access;
- (2) Integrated interoperable emergency communications, including multiuse networks that provide commercial or transportation information services in addition to emergency communications services;

(3) Homeland security communications;

(4) Transportation safety communications; or

(5) Location technologies used outside an urbanized area.

The provision also clarified that the Agency could consider State or local 911 fees to be security for a loan under this section and that loans may be made in certain circumstances to an emergency communication equipment provider to accomplish the purposes of this section where a State or municipality may be prohibited from incurring debt.

List of Subjects in 7 CFR Part 1735

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, Chapter XVII, Title 7 of the Code of Federal Regulation is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

- 1. The authority citation for part 1735 continues to read as follow:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—Loan Purposes and Basic Policies

- 2. Amend § 1735.10 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 1735.10 General.

(a) Loans made or guaranteed by the Administrator of RUS will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*), and 7 CFR chapter XVII. RUS provides borrowers with specialized and technical accounting, engineering, and other managerial assistance in the construction and operation of their facilities when necessary to aid in the development of rural telephone service and to protect loan security. The Rural Utilities Service (RUS) makes loans to:

- (1) Furnish and improve telephone service in rural areas; and
- (2) To finance facilities and equipment which expand, improve or provide:
 - (i) 911 access;
 - (ii) Integrated interoperable emergency communications, including multiuse networks that provide commercial or transportation information services in addition to emergency communications services;

(iii) Homeland security communications;

(iv) Transportation safety communications; or

(v) Location technologies used outside an urbanized area.

* * * * *

(g) For the purpose of paragraph (a)(2) of this section, rural areas means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:

(1) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or

(2) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants, for the purpose of the definition of rural areas in this section, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.

- 3. Amend § 1735.12 by adding paragraph (g) to read as follows:

§ 1735.12 Nonduplication.

* * * * *

(g) RUS shall consider the following criteria for loans made for the purposes described in § 1735.10(a)(2):

(1) In making a preliminary assessment and a credit decision, the RUS will take into consideration the extent to which the emergency communications capability or emergency communications benefits already exist in the affected area and the need expressed by the proposed user of the emergency communications technology.

(2) The RUS will not consider an application to finance an upgrade of 911 capabilities or other emergency communications capability by different providers serving the same geographic area to be automatically duplicative. For example, RUS will generally not consider an application from two competing wireless carriers to upgrade their E911 capabilities in overlapping geographic territories to be duplicative, however the carrier's competitive situation will be a relevant consideration in evaluating the ability of a service provider to repay their loan.

(3) Duplication considerations will be reviewed on the basis of the emergency communications benefit; the Agency encourages applicants to fully embrace interoperability to maximize the impact of RUS financed investments. In the case of dual or multi-use technologies, the extent to which the proposed non-emergency communications benefits are available from other providers within the proposed service area will be

considered in determining loan feasibility.

■ 4. Amend § 1735.14 by adding paragraph (a)(4) to read as follows:

§ 1735.14 Borrower eligibility.

(a) * * *

(4) For purposes of § 1735.10(a)(2):

(i) Any entity eligible to borrow from the RUS;

(ii) State or local governments;

(iii) Indian Tribes (as defined in § 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); or

(iv) An emergency communications equipment provider that in the sole discretion of RUS offers adequate security for a loan where the State or local government that has jurisdiction over the proposed project is prohibited by law from acquiring debt.

* * * * *

■ 5. Amend § 1735.22 by redesignating paragraphs (c) through (i) as paragraphs (d) through (j), and adding new paragraph (c) to read as follows:

§ 1735.22 Loan security.

* * * * *

(c) The RUS will consider Government-imposed fees related to emergency communications (including State or local 911 fees) which are pledged to the repayment of a loan as security.

* * * * *

Dated: August 26, 2011.

Jessica Zufolo,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2011-23152 Filed 9-9-11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 48

[Docket ID OCC-2011-0021]

RIN 1557-AD42

Retail Foreign Exchange Transactions

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting an interim final rule authorizing Federal savings associations and their operating subsidiaries to engage in off-exchange transactions in foreign currency with retail customers, subject to the

requirements enumerated in the OCC's retail forex rule. The rule implements the provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring that these transactions be conducted by national banks and Federal savings associations (and their respective operating subsidiaries) only pursuant to an authorizing regulation issued by the OCC. It is substantively the same as the rule the OCC has adopted with respect to national banks and their operating subsidiaries.

DATES: *Effective Date:* September 12, 2011.

Comment Date: Comments must be received by November 14, 2011.

FOR FURTHER INFORMATION CONTACT:

Tena Alexander, Senior Counsel, or Roman Goldstein, Attorney, Securities and Corporate Practices Division, (202) 874-5120.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).¹ As amended by section 742(c) of the Dodd-Frank Act, the Commodity Exchange Act (CEA) provides that a United States financial institution² for which there is a Federal regulatory agency³ shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a retail customer⁴ except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe⁵ (a retail forex rule). A transaction described in section 2(c)(2)(B)(i)(I) includes "an agreement, contract, or transaction in foreign currency that * * * is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the

¹ Public Law 111-203, 124 Stat. 1376.

² The Commodity Exchange Act (CEA) defines "financial institution" as including "a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))." 7 U.S.C. 1a(21)(E). Federal savings associations are depository institutions. See 12 U.S.C. 1813(c)(1).

³ For purposes of the retail forex rules, "Federal regulatory agency" includes "an appropriate Federal banking agency." 7 U.S.C. 2(c)(2)(E)(i)(III).

⁴ A retail customer is a person that is not an eligible contract participant under the CEA. Eligible contract participants are generally sophisticated investors; they include individuals with discretionary investments exceeding \$10 million and businesses with assets exceeding \$10 million.

⁵ 7 U.S.C. 2(c)(2)(E)(ii)(I).

Securities Exchange Act of 1934 (15 U.S.C. 78f(a))."⁶

A Federal regulatory agency's retail forex rule must treat similarly all such futures and options and all agreements, contracts, or transactions that are functionally or economically similar to such futures and options.⁷ Retail forex rules must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements and may include such other standards or requirements as the Federal regulatory agency determines to be necessary.⁸

The Dodd-Frank Act amendment to the CEA took effect on July 16, 2011.⁹ Prior to July 21, 2011, the Office of Thrift Supervision (OTS) was the appropriate Federal regulatory agency for Federal savings associations. The OTS did not issue a retail forex rule for Federal savings associations, and, accordingly, Federal savings associations were prohibited from offering or entering into retail forex futures and options as of July 16, 2011.¹⁰

On July 21, 2011, the OCC became the appropriate Federal banking agency for Federal savings associations.¹¹ On that date, the OCC also obtained authority to issue regulations, including regulations authorizing retail forex transactions, with respect to Federal savings associations. The OCC is issuing this interim final rule with request for public comment to expand the scope of its retail forex rule to cover Federal savings associations. Federal savings associations would thus be allowed to engage in retail forex transactions on the same terms as national banks.

II. Overview of the Interim Final Rule and Related Actions

On September 10, 2010, the Commodity Futures Trading Commission (CFTC) issued a retail forex rule for persons subject to its jurisdiction.¹² On April 22, 2011, the

⁶ 7 U.S.C. 2(c)(2)(B)(i)(II).

⁷ 7 U.S.C. 2(c)(2)(E)(iii)(II).

⁸ 7 U.S.C. 2(c)(2)(E)(iii)(II).

⁹ See 12 U.S.C. 5411-12.

¹⁰ The CEA's prohibition on engaging in certain transactions does not, by its terms, extend to other transactions, nor does it prohibit a Federal savings association from keeping on its books a retail forex transaction entered into prior to July 16, 2011. See 7 U.S.C. 2(c)(e)(E)(ii)(I). For example, the CEA did not prohibit transactions described in 7 U.S.C. 2(c)(2)(C)(i) (leveraged, margined, or bank-financed forex transactions with retail customers).

¹¹ 12 U.S.C. 5412.

¹² *Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries*, 75 FR 55409 (Sept. 10, 2010). The CFTC proposed these rules prior to the enactment of the Dodd-Frank Act. *Regulation of Off-Exchange Retail Foreign*