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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1751

RIN 0572–AB07

Telecommunications System Planning and Design Criteria, and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its rule on State Telecommunications Modernization Plans to incorporate changes in RUS Telecommunications Program policy. These amendments also incorporate suggestions received from the public in response to the proposed rule. All Telephone Borrowers will be affected by this final rule.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Director, Telecommunications Standards Division, U.S. Department of Agriculture, Rural Utilities Service, 14th & Independence Avenue, SW., Room 2835–S, Washington, DC 20250–1500, telephone number (202) 720–8663.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not: (1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS Telecommunications Program provides loans to RUS Borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS Borrowers, as a result of obtaining federal financing, receive economic benefits which ultimately offset any direct economic costs associated with complying with RUS regulations and requirements. Moreover, this action is in response to the Rural Electrification Loan Restructuring Act of 1993.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the final rule have been submitted to OMB for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Send comments regarding this collection of information to: Department of Agriculture, Clearance Office, Office of Information Resources Management, Room 404–W, Washington, DC 20250, and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Room 10102, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

RUS has determined that this final 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.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), (Reorganization Act), signed by President Clinton on October 13, 1994, provides for a streamlining and reorganizing of the Department of Agriculture (Department). The Reorganization Act requires the Secretary of Agriculture (Secretary) to establish the Rural Utilities Service (RUS) within the Department. On October 20, 1994, the Secretary of Agriculture, in Secretary's Memorandum 1010–1, abolished the Rural Electrification Administration (REA) and established RUS, as required by the Reorganization Act.

On December 20, 1993, RUS (formerly REA) published an interim rule (58 FR 66250) to incorporate changes to telephone loan policies required by the Rural Electrification Loan Restructuring Act of 1993 (RELRA) (107 Stat. 1356).

On April 13, 1994, RUS adopted its interim rule as a final rule (59 FR 17460) with one exception, 7 CFR Part 1751, Telecommunications System Planning and Design Criteria, and Procedures. Because of the overwhelming response and concerns regarding the requirements of the State Telecommunications Modernization Plan (Modernization Plan), RUS published proposed amendments to 7 CFR Part 1751, Subpart B on October 27, 1994 (59 FR 53939).

During the comment period RUS received 39 comments regarding the proposed rule and these comments were taken into consideration in preparing the final rule. Comments were received from the following:

(1) Colorado Public Utilities Commission Staff.
(2) Florida Public Service Commission.
(3) Idaho Public Utilities Commission.
(4) Illinois Commerce Commission.

(5) Louisiana Public Service Commission.
(6) Michigan Public Service Commission Staff.
(7) Missouri Public Service Commission.
(8) Nebraska Public Service Commission.
(9) New England Conference of Public Utilities Commissioners, Inc.
(10) New York State Department of Public Service.
(11) Ohio Public Utilities Commission.
(12) Pennsylvania Public Utility Commission.
(13) Texas Public Utility Commission.
(14) Virginia State Corporation Commission.
(15) Wisconsin Public Service Commission.
(16) Wyoming Public Service Commission.
(17) National Association of Regulatory Utility Commissioners.
(18) GTE Service Corporation.
(19) Joint comments from 15 RUS Telephone Borrowers and 2 consulting engineering companies located in South Carolina.
(20) TDS Telecom.
(21) Unicom.
(22) United and Central Telephone Companies.
(23) National Emergency Number Association.
(24) Joint comments from the National Rural Telecom Association and the Western Rural Telephone Association.
(25) Nebraska Telephone Association.
(26) North Dakota Association of Telephone Cooperatives.
(27) National Telephone Cooperative Association.
(28) New York State Telephone Association, Inc.
(29) Joint comments from the Oklahoma Rural Telephone Coalition, Rural Arkansas Telephone Systems, and Texas Statewide Telephone Cooperative, Inc.
(30) Organization for the Protection and Advancement of Small Telephone Companies.
(31) Oregon Independent Telephone Association.
(32) United States Telephone Association.
(33) Bell Atlantic Telephone Companies.
(34) Southwestern Bell Telephone Company.
(35) U.S. West Communications, Inc.
(36) MCI Telecommunications Corporation.
(37) Kadrmas, Lee & Jackson, P.C.
(38) GVNW Inc/Management.
(39) Reed Veach Wurdeman and Associates.

1. Comment Summary. Many commenters argued that the Modernization Plan requirements in the proposed rule go beyond a reasonable reading of RELRA. More specifically, they said that RELRA requires ''objectives'', but the proposed rule translates those into requirements, and sets deadlines for accomplishment of those requirements that are insensitive to market forces, technological development, and State regulatory authority.

Response. RUS believes that a Modernization Plan without service improvement requirements, and timeframes for achievement, would be ineffective in accomplishing the modernization of rural telecommunications infrastructure that RELRA clearly intends. RELRA makes the Modernization Plan a condition to eligibility for certain financing programs administered by RUS. An ineffective Modernization Plan would undermine this direction of financing resources under RELRA.

In response to the substance of these comments, RUS has recast its requirements and timeframes. The long-term requirements have been changed to goals, and some requirements have been reduced. From the comments received, RUS believes that these changes will mitigate the concerns about marketability of required technologies. RUS again invites States to exercise their authority by taking advantage of the one year period of eligibility to prepare a Modernization Plan.

2. Comment Summary. One commenter noted that if no Modernization Plan is developed for a State, thereby excluding the State from some RUS program benefits, service rates would probably increase in the State. Others expressed concern that investments made to comply with Modernization Plan requirements would affect other Telecommunications Providers through the universal service fund and other toll settlement plans.

Response. The Telecommunications Providers covered by Modernization Plans are interconnected with other telecommunications carriers in many ways, and they are certainly interconnected economically. Borrowers and PUC's can make various decisions that can jeopardize RUS funding of projects, and these may affect service rates for subscribers and toll pool distributions. RELRA requires that no loans except guaranteed loans be made in a State without a Modernization Plan.

3. Comment Summary. Many commenters suggested that the language in § 1751.106(a)(5) is not consistent with the language in § 1751.106(f) of the proposed rule. Some commenters preferred the language in the response to comments to the language presented in the proposed rule.

Response. The language in § 1751.106(a)(5) was a restatement of the provision in RELRA. Paragraph (g), (paragraph (f) in the proposed rule) of the subsection is RUS's effort to clarify the term ''uniform deployment schedules'' and is intended to allow Plan Developers some latitude in the timing of deployment of advanced services. § 1751.106(a) has been rewritten to clarify that it is a restatement of RELRA so as to eliminate any appearance of a conflict with paragraph (g).

4. Comment Summary. Many commenters wonder what guidelines RUS will use to determine whether something is ''technically or economically feasible'', under § 1751.103(b) of the proposed rule.

Response. Technical feasibility means the equipment is available to do the job. Economic feasibility means the job can be done at a reasonable cost. Every telecommunications loan processed by RUS is studied for technical and economic feasibility. Technical feasibility of the loan is determined by telecommunications engineers with knowledge of current technology and facility costs. Economic feasibility is determined by the loan feasibility study which is a comprehensive consideration of projected revenues and expenses for the particular Borrower. The results of RUS's studies are submitted to the Borrower for concurrence before a loan is approved.

5. Comment Summary. One commenter pointed out that the extension process discussed in § 1751.106(b) may require Borrowers to request extensions from groups of other Borrowers who might have competitive interests. This could happen if the Plan Developer is a Borrower group.

Response. This has been rewritten to give this authority to RUS in those cases where the Plan Developer is the majority of RUS Borrowers.

6. Comment Summary. Many commenters opposed the requirement in § 1751.106(g)(2)(ii) for eliminating inductive loading of copper loops. Some commenters argued that § 1751.106(g)(2)(ii) is contradictory to § 1751.103(b) in the proposed rule.

Response. The requirement in § 1751.106(g)(2)(ii) has been deleted.

7. Comment Summary. Some commenters expressed concern about the exception process mentioned in § 1751.106(g)(2)(i) in the proposed rule for those who do not want the elimination of party line service.

Response. The language providing for the elimination of party line service has been revised to focus this requirement on the capability of providing one-party service.

8. Comment Summary. Many commenters argued that the powering requirement in § 1751.106(h)(2)(ii) and § 1751.106(i)(2)(iv) in the proposed rule is not supported by industry consensus at this time. Some suggested that this item be approached from a reliability standpoint. Some commenters believed this requirement covered powering of fax machines and PBXs.

Response. RUS does not want to see the reliability of basic telecommunications service decline as a result of modernization. Such a decline will most certainly occur if local powering is relied upon even for basic voice telephone service, because the average annual outage time for a residential line connected to the public switched network is estimated at 105 minutes, whereas the average annual outage time for residential power users is over 300 minutes. The final rule has been revised to require that the Plan Developer make ''provision for'' service continuation during local power failure. Regarding the confusion over what has to be resilient to local power failure, this provision was carefully written in the proposed rule to cover only basic voice communications in the event of a local power failure. RUS has rewritten this provision to make this point without mentioning specific equipment and technologies that need not be provided with alternative power.

9. Comment Summary. Many commenters expressed opposition to the medium-term requirement for switched 1.544 Mb/sec service. Some commenters suggested that this would be very expensive to provide. Others suggested that only a few central office switches could provide the service. One commenter suggested the capability would be useless unless interexchange carriers could carry such signals. One commenter noted that in Alaska, where satellites play an important role in connecting exchanges to the network, this requirement would be very difficult.

Response. The substance of the comments received has caused RUS to reconsider this requirement. The requirement for switched 1.544 Mb/sec service in the proposed rule has been changed to a requirement for the transmission and reception of at least 1 Mb/sec and the reception of video. The Plan Developer may specify how this is to be accomplished.

10. Comment Summary. Two commenters observed that the Modernization Plan would apply to all Borrowers, and as defined that would include past as well as present and future Borrowers. This would mean that RUS would apply RELRA requirements retroactively.

Response. This was not RUS's intent. The language has been changed to clarify that the Modernization Plan for a State will only act to set requirements on Borrowers for certain kinds of loans, and further, only if the loan is approved after the date that the Modernization Plan is approved by RUS.

11. Comment Summary. Some commenters thought that § 1751.106(i)(2)(iii) in the proposed rule was intended to eliminate plain old telephone service (''POTS'') as a new service offering, and that this long-term requirement would force subscribers to purchase digital telephones.

Response. This requirement has been deleted from the regulation as part of the recasting of the Modernization Plan discussed above.

12. Comment Summary. One commenter suggested that § 1751.105 be revised to state that no amended Modernization Plan could increase the requirements of a previously-approved Modernization Plan.

Response. RUS disagrees. This could unreasonably limit a State or group of Borrowers in their efforts to continue to modernize telecommunications systems in the State.

13. Comment Summary. One commenter is concerned whether RUS will follow 5 U.S.C. § 553 regarding notice and comment procedures if the rule is changed in the future. Another commenter felt that RUS has no statutory authority to revise the rule after the final rule is issued.

Response. The underlying purpose of the Modernization Plan is to stimulate the continuing modernization of telephone service. RUS believes that it has the obligation to provide guidance to Plan Developers for updating their Modernization Plans. As is stated in § 1751.105(e), RUS, if it revises the rule, must follow the Administrative Procedures Act.

14. Comment Summary. One commenter expressed concern that under § 1751.103 as written in the proposed rule, RUS could deny loans to all Borrowers in a State if any Borrower does not participate in the Modernization Plan.

Response. This was not RUS's intent. Language in this subsection has been revised to clarify that only the Borrower who does not participate in the Modernization Plan is denied certain types of loans.

15. Comment Summary. Many commenters expressed displeasure with the one year period for State eligibility with no extensions, and the rejection of Borrower-prepared plans before the end of that year. Also, one commenter recommended that States be required to notify other interested parties 180 days before the expiration of the one year period of their intent to file or not to file a proposed Modernization Plan.

Response. Beginning with the publication of this Final Rule, States have a one year period of eligibility for preparing a Modernization Plan. There is no provision in RELRA for any party other than a State to prepare a Modernization Plan until the expiration of that one year. Regarding the suggestion for advance notice of the State's intent to file, RUS agrees and has added language to § 1751.102 (b) to request a State to inform RUS if it does not intend to submit a proposed Modernization Plan. RUS will inform its Borrowers as well as telephone industry associations when it has been notified that a State does not intend to develop a Modernization Plan.

16. Comment Summary. Several commenters expressed opposition to § 1751.106(e) in the proposed rule, which provides for Modernization Plan guidelines for the development of affordable tariffs for medical links and distance learning services. Two commenters argued that this provision would usurp a PUC's rate regulatory authority by mandating a subsidy.

Response. One of the requirements of RELRA is that the ''Modernization Plan must provide for the availability of telecommunications services for improved business, educational, and medical services.'' If such services are to be ''available'' in any reasonable sense, they must be affordable.

17. Comment Summary. Several commenters suggested that RUS should provide a model Modernization Plan.

Response. RUS believes, and most commenters have strongly asserted, that Modernization Plans can best be developed by local State groups and Telecommunications Providers. In view of the preponderance of comments received on the proposed rule, RUS declines to issue suggested language that might be seen as an ad hoc standard for Modernization Plans.

18. Comment Summary. One commenter suggested that requirements for improvements under Modernization Plans should be made conditional upon adequate available federal capital and cost recovery mechanisms.

Response. Unless the PUC decides otherwise, the Modernization Plan requirements only apply to RUS

Borrowers. Moreover, the only enforcement of a Modernization Plan pursuant to RELRA is denial of a loan to a Borrower that is not participating in the Modernization Plan. Therefore, to a considerable extent, Modernization Plan requirements are conditional upon the availability of federal capital and cost recovery mechanisms.

19. Comment Summary. Several commenters argued that RELRA did not give RUS the authority to require a modernization of the national communications infrastructure. These commenters noted that this is contrary to the Communications Act of 1934 objective of consolidating federal authority over telecommunications into one agency.

Response. Through various financing programs and technical initiatives, the REA, now RUS, has been instrumental in the modernization of the national rural telecommunications infrastructure. The provisions of RELRA as set forth in this final rule will continue that modernization.

20. Comment Summary. One commenter pointed out that since a Borrower-developed Modernization Plan can only apply to Borrowers, the rule should make that clear.

Response. Language has been added to § 1751.102(c) to clarify that a Borrower-developed plan will only apply to Borrowers.

21. Comment Summary. One commenter said that Borrower-developed plans can affect others, and proposed that RUS require that Borrowers allow outside participation in development of a plan.

Response. RUS encourages all Plan Developers to include outside participation, but does not believe it is necessary for Borrower groups to be required to include outside participation.

22. Comment Summary. One commenter expressed concern that Modernization Plan requirements would threaten universal service because it would require Borrowers and non-Borrowers to build infrastructure whether or not it met customer needs.

Response. The regulation has been revised to alleviate this concern. RUS performs feasibility studies to ensure that the proposed construction does not threaten the viability of a Borrower.

23. Comment Summary. One commenter suggested that in the balance between cost and improved service, cost is clearly secondary to RUS.

Response. RUS is concerned with improved service to rural subscribers at reasonable prices. RUS strongly feels that communications infrastructure is essential to rural economic development. The real cost of failing to provide this infrastructure is a failing rural economy, decline in rural subscribers and less revenue to the rural telecommunications provider.

24. Comment Summary. Many commenters found the approximate restatement of a part of RELRA in § 1751.106(a) to be confusing and vague. It uses terms that do not seem to apply to any communications industry segment such as ''video images'' and ''proper routing of information to subscribers''.

Response. This language has been clarified to show that § 1751.106(a) is a restatement of RELRA while the balance of the section implements the law.

25. Comment Summary. One commenter proposed that RUS should automatically grant lien accommodations for Borrowers that do not meet the minimum requirements of their State Modernization Plan.

Response. RUS disagrees. To do so would negate RELRA's purpose of improving and modernizing telecommunications and might jeopardize the security of RUS loans.

26. Comment Summary. One commenter proposed that RUS review Modernization Plans within 30 days without exception, and asserts that as written the rule allows RUS to postpone denial until it is too late for a developer to resubmit a plan for approval.

Response. Both Plan Developers and RUS face difficult schedules as a result of this regulation. RUS has developed an internal processing procedure intended to deal with the estimated 45 Modernization Plans that could be received simultaneously. It is the intent of RUS to process all Modernization Plans within 30 days of receipt of the proposed Modernization Plan. If the submission of the proposed Plan is timely, this will not be a problem.

27. Comment Summary. One commenter noted that RELRA places no time limit on RUS as to promulgation of a final rule. This commenter suggested that RUS should wait for further congressional direction.

Response. RUS was required under RELRA to issue the interim regulation, and RUS wishes to respond to the public by issuing a final rule that implements the requirements of RELRA in a reasonable and effective manner. Without this final rule, the interim rule remains in effect.

28. Comment Summary. One commenter asked why the rule does not apply to RUS electric borrowers and grant recipients who may compete with RUS telephone Borrowers either directly or through a subsidiary.

Response. As written, the Modernization Plan will serve as requirements for all telephone Borrowers seeking new financing. Modernization Plans developed by the States may expand coverage to others in the telecommunications industry.

List of Subjects in 7 CFR Part 1751

Loan programs—communications, Telecommunications, Telephone.

For reasons set forth in the preamble, chapter XVII of Title 7 of the Code of Federal Regulations is amended by revising part 1751 to read as follows:

PART 1751—TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA, AND PROCEDURES

Subpart A—[Reserved]

Sec.
1751.1–1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

1751.100 Definitions.
1751.101 General.
1751.102 Modernization Plan Developer; eligibility.
1751.103 Loan and loan advance requirements.
1751.104 Obtaining RUS approval of a proposed Modernization Plan.
1751.105 Amending a Modernization Plan.
1751.106 Modernization Plan; requirements.

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart A—[Reserved]

§§ 1751.1–1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

§ 1751.100 Definitions.

As used in this subpart:

Bit rate. The rate of transmission of telecommunications signals or intelligence in binary (two state) form in bits per unit time, e.g., Mb/s (megabits per second), kb/s (kilobits per second), etc.

Borrower. Any organization that has received an RUS loan designation number and which has an outstanding telephone loan made by RUS or the Rural Telephone Bank, or guaranteed by RUS, or which has a completed loan application with RUS.

Emerging technologies. New or not fully developed methods of telecommunications.

Modernization Plan (State Telecommunications Modernization Plan). A State plan, which has been approved by RUS, for improving the telecommunications network of those Telecommunications Providers covered

by the plan. A Modernization Plan must conform to the provisions of this subpart.

New facilities. Facilities which are wholly or partially constructed or reconstructed after a short- or medium-term requirements start date, as appropriate. This does not include connections or capacity extensions within the wired capacity of existing plant such as adding line cards to existing equipment.

Plan Developer. The entity creating the Modernization Plan for the State, which may be the State PUC, the State legislature, or a numeric majority of the RUS Borrowers within the State. When this part refers to the PUC as the Plan Developer, this includes the State legislature.

PUC (Public Utilities Commission). The public utilities commission, public service commission or other State body with such jurisdiction over rates, service areas or other aspects of the services and operation of providers of telecommunications services as vested in the commission or other body authority, to the extent provided by the State, to guide development of telecommunications services in the State. When this part refers to the PUC as the Plan Developer, this includes the State legislature.

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

REA. The Rural Electrification Administration, formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RELRA. The Rural Electrification Loan Restructuring Act of 1993 (107 Stat. 1356).

RUS. The Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

RUS cost-of-money loan. A loan made under section 305(d)(2) of the RE Act bearing interest as determined under 7 CFR 1735.31(c). RUS cost-of-money loans are made concurrently with RTB loans.

RUS hardship loan. A loan made by RUS under section 305(d)(1) of the RE Act bearing interest at a rate of 5 percent per year.

RTB loan. A loan made by the Rural Telephone Bank (RTB) under section 408 of the RE Act bearing interest as determined under 7 CFR 1610.10. RTB loans are made concurrently with RUS cost-of-money loans.

State. Each of the 50 states of the United States, the District of Columbia, and the territories and insular possessions of the United States. This does not include countries in the Compact of Free Association.

Telecommunications. The transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

Telecommunications providers. RUS Borrowers and if the Plan Developer is a PUC, such other entities providing telecommunications services as the developer of the Modernization Plan (See § 1751.101) may determine.

Wireline Service. Telecommunications service provided over telephone lines. It is characterized by a wire or wirelike connection carrying electricity or light between the subscriber and the rest of the telecommunications network. Wireline Service implies a physical connection. Although radio may form part of the circuit, it is not the major method of transmission as in radiotelephone.

§ 1751.101 General.

(a) It is the policy of RUS that every State have a Modernization Plan which provides for the improvement of the State's telecommunications network.

(b) A proposed Modernization Plan must be submitted to RUS for approval. RUS will approve the proposed Modernization Plan if it conforms to the provisions of this subpart. Once obtained, RUS's approval of a Modernization Plan cannot be rescinded.

(c) The Modernization Plan shall not interfere with RUS's authority to issue such other telecommunications standards, specifications, requirements, and procurement rules as may be promulgated from time to time by RUS including, without limitation, those set forth in 7 CFR part 1755.

(d) The Modernization Plan must, at a minimum, apply to RUS Borrowers' wireline service areas. If a Modernization Plan is developed by the PUC, RUS encourages, but does not require, that the Modernization Plan's requirements apply to the rural service areas of all providers of telecommunications services in the State. A PUC's decision not to include non-RUS Borrowers will not prejudice RUS approval of that PUC's Modernization Plan. The PUC may also, at its option, extend coverage of the Modernization Plan to all service areas of all providers of telecommunications services in the State. In addition, while the requirements and goals contained in § 1751.106 apply only to wireline services, the PUC, at its discretion, may extend coverage of Modernization Plans to wireless or other communications services in the State as it deems appropriate. Borrower-developed Modernization Plans apply only to Borrowers.

§ 1751.102 Modernization Plan Developer; eligibility.

(a) Each PUC is eligible until February 13, 1996 to develop a proposed Modernization Plan and deliver it to RUS. RUS will review and consider for approval all PUC-developed Modernization Plans received by RUS within this one year period. The review and approval, if any, may occur after the one year period ends even though the PUC is no longer eligible to submit a proposed Modernization Plan.

(b) The PUC must notify all Telecommunications Providers in the State and other interested parties of its intent to develop a proposed Modernization Plan. The PUC is encouraged to consider all Telecommunications Providers' and interested parties' views and incorporate these views into the Modernization Plan. In the event that the PUC does not intend to develop a proposed Modernization Plan, RUS requests that the PUC inform RUS of this decision as soon as possible.

(c)(1) If the PUC is no longer eligible to develop a Modernization Plan or has informed RUS that it will not develop a Modernization Plan, as described in paragraphs (a) and (b) of this section, a majority of the Borrowers within the State may develop the Modernization Plan. If a majority of Borrowers develops the Modernization Plan, the following apply:

(i) All Borrowers shall be given reasonable notice of and shall be encouraged to attend and contribute to all meetings and other proceedings relating to the development of the Modernization Plan; and

(ii) Borrowers developing a Modernization Plan are encouraged to solicit the views of other providers of telecommunications services and interested parties in the State.

(2) There is no time limit placed on Borrowers to develop a Modernization Plan. Borrowers should be aware that certain types of loans may be restricted until a Modernization Plan is approved. See § 1751.103.

§ 1751.103 Loan and loan advance requirements.

(a) For information about loan eligibility requirements in relation to the Modernization Plan, see 7 CFR part 1735. In particular, beginning February 13, 1996, RUS will make RUS hardship loans, RUS cost-of-money loans, and RTB loans for facilities and other RE Act purposes in a State only if:

(1) The State has an RUS approved Modernization Plan; and

(2) The Borrower to whom the loan is to be made is participating in the Modernization Plan for the State. A Borrower is considered to be participating if, in RUS's opinion, the purposes of the loan requested by the Borrower are consistent with the Borrower achieving the requirements stated in the Modernization Plan within the timeframe stated in the Modernization Plan unless RUS has determined that achieving the requirements is not technically or economically feasible.

(b) With regard to the three types of loans discussed in paragraph (a), only loans approved after the date the State has an RUS approved Modernization Plan are subject to complying with the Modernization Plan.

(c) For loans subject to complying with the Modernization Plan, advances will not be made if, in RUS's opinion, the advances are not consistent with achieving the requirements of the Modernization Plan.

§ 1751.104 Obtaining RUS approval of a proposed Modernization Plan.

(a) To obtain RUS approval of a proposed Modernization Plan, the Plan Developer must submit the following to RUS:

(1) A certified copy of the statute or PUC order, if the PUC is the Plan Developer, or a written request for RUS approval of the proposed Modernization Plan signed by an authorized representative of the Plan Developer, if a majority of Borrowers is the Plan Developer; and

(2) Three copies of the proposed Modernization Plan.

(b) Generally, RUS will review the proposed Modernization Plan within (30) days and either:

(1) Approve the Modernization Plan if it conforms to the provisions of this subpart in which case RUS will return a copy of the Modernization Plan with notice of approval to the Plan Developer; or

(2) Not approve the proposed Modernization Plan if it does not conform to the provisions of this subpart. In this event, RUS will return the proposed Modernization Plan to the Plan Developer with specific written comments and suggestions for modifying the proposed Modernization Plan so that it will conform to the provisions of this subpart. If the Plan Developer remains eligible, RUS will invite the Plan Developer to submit a modified proposed Modernization Plan for RUS consideration. This process can continue until the Plan Developer gains approval of a proposed Modernization Plan unless the Plan Developer is a PUC whose eligibility has expired. If a PUC's eligibility has expired, RUS will return the proposed Modernization Plan unapproved. Because RUS does not have authority to extend the term of a PUC's eligibility, RUS recommends that the PUC submit a proposed Modernization Plan at least 90 days in advance of February 13, 1996 to allow time for this process.

§ 1751.105 Amending a Modernization Plan.

(a) RUS understands that changes in standards, technology, regulation, and the economy could indicate that an RUS-approved Modernization Plan should be amended.

(b) The Plan Developer of the Modernization Plan may amend the Modernization Plan if RUS finds the proposed changes continue to conform to the provisions of this subpart.

(c) The procedure for requesting approval of an amended Modernization Plan is identical to the procedure for a proposed Modernization Plan except that there are no time limits on the eligibility of the Plan Developer.

(d) The existing Modernization Plan remains in force until RUS has approved the proposed amended Modernization Plan.

(e) RUS may from time to time revise these regulations to incorporate newer technological and economic standards that RUS believes represent more desirable goals for the future course of telecommunications services. Such revisions will be made in accordance with the Administrative Procedure Act. These revisions shall not invalidate Modernization Plans approved by RUS but shall be used by RUS to determine whether to approve amendments to Modernization Plans presented for RUS approval after March 15, 1995.

§ 1751.106 Modernization Plan; requirements.

(a) The requirements for a Modernization Plan as stated in RELRA are:

(1) The plan must provide for the elimination of party line service.

(2) The plan must provide for the availability of telecommunications services for improved business, educational, and medical services.

(3) The plan must encourage and improve computer networks and information highways for subscribers in rural areas.

(4) The plan must provide for—

(i) Subscribers in rural areas to be able to receive through telephone lines—

(A) Conference calling;

(B) Video images; and

(C) Data at a rate of at least 1,000,000 bits of information per second; and

(ii) The proper routing of information to subscribers.

(5) The plan must provide for uniform deployment schedules to ensure that advanced services are deployed at the same time in rural and nonrural areas.

(6) The plan must provide for such additional requirements for service standards as may be required by the Administrator.

(b) To implement the requirements of the law described in paragraph (a) of this section, RUS has set minimum requirements as described in paragraphs (i) and (j) of this section. They are grouped into short-term and medium-term requirements. RUS has also included long-term goals which are not requirements. The Modernization Plan must meet all of the statutory requirements of RELRA and shall provide that short- and medium-term requirements be implemented as set forth in this section of the regulation except that the PUC, if it is the Plan Developer, or RUS, if a majority of Borrowers is the Plan Developer, may approve extensions of time if the required investment is not economically feasible or if the best available telecommunications technology lacks the capability to enable the Telecommunications Provider receiving the extension to comply with the Modernization Plan. Extensions shall be granted only on a case-by-case basis and generally shall not exceed a total of five years from the first such extension granted to the Telecommunications Provider.

(c) Each State's Modernization Plan shall be a strategic development proposal for modernizing the telecommunications network of the Telecommunications Providers covered by the Modernization Plan. In addition to implementing the requirements described in paragraphs (a), (i), and (j) of this section, the Modernization Plan shall include a short engineering description of the characteristics of a future telecommunications structure that would enable all Telecommunications Providers to achieve the requirements and goals of the Modernization Plan.

(d) Within the scope of § 1751.101(d), if the Plan Developer is the PUC, the Modernization Plan shall name the Telecommunications Providers in the State, in addition to Borrowers, that are covered by the Modernization Plan.

(e) The Modernization Plan must require that the design of the network provided by Telecommunications Providers allow for the expeditious deployment and integration of such emerging technologies as may from time to time become commercially feasible.

(f) The Modernization Plan must provide guidelines to Telecommunications Providers for the development of affordable tariffs for medical links and distance learning services.

(g) With regard to the uniform deployment requirement of the law restated in paragraph (a)(5) of this section, if services cannot be deployed at the same time, only the minimum feasible interval of time shall separate availability of the services in rural and nonrural areas.

(h) The Modernization Plan must make provision for reliable powering of ordinary voice telephone service operating over those portions of the telecommunications network which are not network powered. In the event of electric utility power outages, an alternative source of power must be available to ensure reliable voice service.

(i) *Short-term requirements.* (1) The ''short-term requirements start date'' is the date one year after the date RUS approves the Modernization Plan for the State.

(2) All New Facilities providing Wireline Service after the short-term requirements start date, even if the construction began before such date, shall be constructed so that:

(i) Every subscriber can be provided 1-party service.

(ii) The New Facilities are suitable, as built or with additional equipment, to provide transmission and reception of data at a rate no lower than 1 Mb/sec.

(3) All switching equipment installed by a Telecommunications Provider after the short-term requirements start date shall be capable of:

(i) Providing custom calling features. At a minimum, custom calling features must include call waiting, call forwarding, abbreviated dialing, and three-way calling; and

(ii) Providing E911 service for areas served by the Telecommunication Provider when requested by the government responsible for this service.

(j) *Medium-term requirements.* (1) The ''medium-term requirements start date'' is the date six years after the date RUS approves the Modernization Plan for the State, or such earlier date as the Modernization Plan shall provide.

(2) All New Facilities providing Wireline Service after the medium-term requirements start date, even if the construction began before such date, shall be capable, as built or with additional equipment, of transmitting video to a subscriber. The video must be capable of depicting a reasonable representation of motion. The frame rate, resolution, and other measures of audio and video quality shall be determined by the Plan Developer.

(3) No later than the medium-term requirements start date, all switching equipment of Telecommunications Providers covered by the Modernization Plan must be capable of providing E911 service when requested by the government responsible for this service.

(4) No later than five years after the medium-term requirements start date, one-party service must be provided upon demand to any subscriber of a Telecommunications Provider covered by the Modernization Plan.

(k) *Long-term goals.* RUS suggests, but does not require, that the provisions of each Modernization Plan be consistent with the accomplishment of the following:

(1) The elimination of party line service.

(2) For subscribers that desire the service, universal availability of:

(i) digital voice and data service (56–164 kb/sec).

(ii) service that provides transmission and reception of high bit rate (no less than 1 Mb/sec) data.

(iii) service that provides reception of video as described in paragraph (j)(2) of this section.

Dated: January 23, 1995.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0835]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its risk-based capital guidelines for state member banks and bank holding companies (banking organizations) to implement section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act). Section 350 states that the amount of risk-based capital required to be maintained by any insured depository institution, with respect to assets transferred with recourse, may not exceed the maximum amount of recourse for which the institution is contractually liable under the recourse agreement. This rule will have the effect of correcting the anomaly that currently exists in the risk-based capital treatment of recourse transactions under which an institution could be required to hold capital in excess of the maximum amount of loss possible under the contractual terms of the recourse obligation.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728–5883), Thomas R. Boemio, Supervisory Financial Analyst (202/452–2982), or David Elkes (202/452–5218), Senior Financial Analyst, Policy Development, Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board's current regulatory capital guidelines are intended to ensure that banking organizations that transfer assets and retain the credit risk inherent in the assets maintain adequate capital to support that risk. For banks, this is generally accomplished by requiring that assets transferred with recourse continue to be reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based and leverage capital ratios. For bank holding companies, transfers of assets with recourse are reported in accordance with generally accepted accounting principles (GAAP), which treats most such transactions as sales, allowing the assets to be removed from the balance sheet.[1] For purposes of calculating bank

[1] The GAAP treatment focuses on the transfer of benefits rather than the retention of risk and, thus, allows a transfer of receivables with recourse to be accounted for as a sale if the transferor: (1) surrenders control of the future economic benefits of the assets; (2) is able to reasonably estimate its obligations under the recourse provision; and (3) is not obligated to repurchase the assets except pursuant to the recourse provision. In addition, the

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