

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1789

RIN 0572-AB17

#### Use of Consultants Funded by Borrowers

**AGENCY:** Rural Utilities Service, USDA.  
**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) hereby establishes procedures and policies pursuant to which a borrower under the RE Act may fund consultants used by the Administrator for financial, legal, engineering, environmental and other technical advice and services. The use of the consultants will assist RUS in the expeditious review of applications for financial assistance or other approvals sought by borrowers.

**EFFECTIVE DATE:** This rule is effective October 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, STOP 1522, Washington, D.C. 20250-1522. Telephone: (202) 720-0736.

**SUPPLEMENTARY INFORMATION:** This final rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Section 3 of the Executive Order.

The programs covered by this rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 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.

#### Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burden contained in this rule will be submitted to the Office of Management and Budget (OMB) for approval under control number 0572-0108. The paperwork contained in this rule will not be effective until approved by OMB.

Send questions or comments regarding any other aspect of this collection of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, STOP 1522, Washington, D.C. 20250-1522.

#### Background

On January 2, 1996, at 61 FR 21, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1789, Use of Consultants Funded by Borrowers, which proposed the agency's policies and procedures pursuant to which a borrower may fund consultants used by the Administrator for financial, legal, engineering, environmental and other technical advice and services.

A total of eleven different organizations commented on the proposed rule. Comments were received from the National Rural Electric Cooperative Association (NRECA), the National Telephone Cooperative Association, CoBank, the National Rural Utilities Cooperative Finance Corporation (CFC), four borrowers, an engineering services firm, a law firm and the U.S. Department of Treasury.

Comments by the NRECA asserted that staffing constraints at RUS and the Office of General Counsel (OGC) have often caused burdensome and costly delays for RUS borrowers in their applications and approval requests. NRECA recommended allowing the borrower to initiate RUS' consideration of use of a borrower-funded consultant. NRECA observed that following the lengthy full and open competition provisions of the Federal Acquisition Regulation (FAR) would, in many cases, negate the usefulness of hiring a third party consultant, and urged that RUS consider authorized exceptions to FAR's full competition requirements.

RUS is of the view that the rule does not prohibit a borrower from initiating a discussion with the applicable regional director; however a requirement that obligates RUS program officials to extensive justification for turning down requests, is unnecessary and takes time away from the administration of RUS programs.

RUS agrees that the application of the FAR may diminish the usefulness of hiring a third party consultant and will consider authorized exceptions to FAR's full competition requirements. RUS will continue to investigate ways in which the procurement process can be streamlined.

NRECA and two other commentators protested that the conflict of interest provisions were too restrictive. They argue that timely response to borrower approval requests required, in many cases, that the consultant have extensive, ready knowledge of RUS programs. NRECA stated that there is a relatively small cadre of lawyers, accountants, and other professionals who are versed in the unique aspects of RUS programs. RUS is of the view that the agency has sufficient internal expertise with respect to specific attributes of the cooperative industry. However, the definition of organizational conflict of interest has

been modified to conform with the definition found in the FAR. The determination of whether or not a conflict exists, using the FAR definition, may be made by either the Administrator or the responsible contracting officer.

NRECA, CoBank and CFC commented that RUS should consider a letter of credit payment mechanism as an alternative to the proposed escrow account arrangement. CFC and Oglethorpe supported direct payment from borrowers to consultants. The use of a letter of credit payment mechanism was one of the first inquiries made by RUS as the agency sought to implement this law. RUS is of the view that direct payment by borrowers to consultants can undermine the integrity of the client-consultant relationship. The final rule is unchanged from the proposed rule with respect to the payment mechanism, but RUS will continue to explore whether a letter of credit mechanism may be substituted for the escrow account mechanism.

One commenter argued that borrowers should be able to select the consultant used by RUS. Alternatively, the commenter said that a borrower should be able to veto RUS' selection of a consultant. Nothing in the proposed rule prohibits borrowers from making recommendations or suggestions to RUS regarding the choice of consultant. Under the final rule, the government retains the authority to select the consultant to be used.

Oglethorpe proffered the third party contracting process set up by the Federal Energy Regulatory Commission (FERC) for preparing environmental impact statements as a model for RUS consultant procurements. RUS followed the FERC developments with great interest and actively explored the possibility of emulating it, with some modifications. The agency was particularly interested in adopting the "pre-qualified list" approach. The statutory authorizations are sufficiently different so as to preclude the agency from emulating the FERC third party contracting process. Among other examples of how the FERC process differs from RUS, the guidance documents issued by FERC in this regard emphasize that those are not federal procurements.

The only law firm which commented urged that the use of legal consultants should be kept to an absolute minimum. The firm voiced the concern that the proposed rule will create a class of "professional consultants" with a vested interest in promoting their participation in RUS transactions. From this, the firm projects the possibility of a proliferation

in the use of legal consultants by RUS and its borrowers, thereby resulting in significantly increased time consumption and transaction costs for matters involving RUS approval.

RUS believes that many aspects of this final rule will be self-policing. The use of borrower funded consultants is a joint decision on the part of RUS and the borrower. If borrowers elect to incur the costs associated with funding third party consultants, it will be because it is to their advantage to do so. Proliferation under those circumstances is not necessarily undesirable.

#### List of Subjects in 7 CFR Part 1789

Administrative practice and procedure, Electric power, Electric utilities, Legal services, Loan programs—energy, Loan programs—telecommunications, Reporting and recordkeeping requirements.

For the reasons stated, RUS amends 7 CFR Chapter XVII to add a new part 1789 to read as follows:

### **PART 1789—USE OF CONSULTANTS FUNDED BY BORROWERS**

#### **Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General**

Sec.

- 1789.150 Purpose.
- 1789.151 Definitions.
- 1789.152 Policy.
- 1789.153 Borrower funding.
- 1789.154 Eligible borrowers.
- 1789.155 Approval criteria.
- 1789.156 Proposal procedure.
- 1789.157 Consultant contract.
- 1789.158 Implementation.
- 1789.159 Contract administration.
- 1789.160 Access to information.
- 1789.161 Conflicts of interest.
- 1789.162 Indemnification agreement.
- 1789.163 Waiver.
- 1789.164—1789.165 [Reserved]

#### **Subpart B—Escrow Account Funding and Payments**

- 1789.166 Terms and conditions of funding agreement.
- 1789.167 Terms and conditions of escrow agreement.
- 1789.168—1789.175 [Reserved]

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

#### **Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General**

##### **§ 1789.150 Purpose.**

This part sets forth policies and the procedures for implementing subsection (c) of section 18 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act) which authorizes the Rural Utilities Service

(RUS) to use the services of Consultants funded by the Borrowers to facilitate timely action on Applications by Borrowers for financial assistance and other approvals.

##### **§ 1789.151 Definitions.**

As used in this part:

*Administrator* means the Administrator of the Rural Utilities Service (RUS).

*Application* means a request for financial assistance under the RE Act or such other approvals as may be required of the RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

*Borrower* means any organization which has an outstanding loan(s) made or guaranteed by RUS or its predecessor agency, the Rural Electrification Administration (REA) under the RE Act or any organization which has submitted or submits an Application before RUS.

*Consultant* means a person or firm which has been retained pursuant to this subpart under a contract to provide financial, legal, engineering, environmental, or other technical advice and services.

*Consultant Contract* means a contract for the performance of consulting services for RUS, to be paid using funds provided by a Borrower, which may be in the form of a Retainer Contract, purchase order, or other form as may be appropriate.

*Escrow Account* means an account established pursuant to § 1789.158.

*Escrow Agreement* means an agreement, between a Borrower, a Consultant and a Third-party Commercial Institution, meeting the requirements of § 1789.167.

*Final Invoice* means the closing Invoice prepared for a given Task Order.

*Financial Consultant* means a Consultant retained pursuant to this part to provide financial advisory services.

*Funding Agreement* means an agreement, between a Borrower and a Consultant, providing for the Borrower to fund the costs of a Task Order and otherwise meeting the requirements of § 1789.166.

*Indemnification Agreement* means an agreement by a Borrower meeting the requirements of § 1789.162.

*Invoice* means an invoice prepared by a Consultant pursuant to the terms of a Consultant Contract.

*Legal Consultant* means any Consultant retained pursuant to this part to provide legal services to RUS.

*Notice of Proposal to Fund* means a notice meeting the requirements of § 1789.156 provided to RUS by the Borrower.

*Organizational Conflict of Interest* means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

*Retainer Contract* means a Consultant Contract providing for a minimum required payment to a Consultant irrespective of whether services are utilized by RUS thereunder.

*Task Order* means a written request for consultant services pursuant to the terms of a Consultant Contract.

*Third-party Commercial Institution* means a commercial financial institution mutually acceptable to the Borrower and the Consultant.

#### **§ 1789.152 Policy.**

(a) As provided in this subpart, RUS may, at its discretion, use the services of Consultants funded by a Borrower where such services will facilitate timely action on an Application by such Borrower for financial assistance or other approvals. Such Consultants may provide financial, legal, engineering, environmental or other technical advice and services in connection with the review of an Application.

(b) With the approval of RUS, a Borrower may fund the cost of consulting services in connection with the review by RUS of an Application by such Borrower. Such funding shall be provided pursuant to the terms of a Funding Agreement between the Borrower and the Consultant designated by RUS.

(c) RUS may not, without the consent of the Borrower, require, as a condition of processing any Application for approval, that the Borrower agree to pay the costs of a Consultant hired to provide services to RUS.

(d) The government shall retain sole discretion in the selection of Consultants to provide services to RUS and the form of contract utilized. RUS may either use the services of one or more Consultants retained under Retainer Contracts or the government may elect to retain a Consultant not otherwise on retainer. The government shall have sole discretion to prescribe terms and conditions of Consultant Contracts. The Borrower may bring considerations to the attention of the government which the Borrower deems pertinent to the selection process.

(e) RUS shall retain sole discretion as to whether to further pursue use of an outside consultant for the relevant application in the event the Borrower

does not enter into the agreements referenced in § 1789.158(c)(3)(iii) within 60 days of the government providing to the Borrower the information set forth in § 1789.158(c)(3).

#### **§ 1789.153 Borrower funding.**

Borrowers shall use their general funds for the purposes of funding consultant services hereunder. Borrowers may not use the proceeds of loans made or guaranteed under the RE Act for costs incurred by Borrowers pursuant to the funding of consultant services for RUS.

#### **§ 1789.154 Eligible borrowers.**

All Borrowers are eligible to fund consultant services under this part.

#### **§ 1789.155 Approval criteria.**

RUS will consider approving the use of consultant services funded by a Borrower on a case by case basis taking into account, among other matters, the following:

(a) Whether such services are required to facilitate timely action on a Borrower's Application. RUS shall determine what represents timely action with respect to each Application considering, among other matters, the review period normally required for such projects by RUS and other lenders and the consequences to the Borrower of adjusting the review period.

(b) The availability of staff resources, the priorities of other projects then before RUS, and the efficiencies to be realized from the use of consultant services.

(c) Whether it is in the best interest of RUS to use Borrower-funded Consultants. Certain types of projects, such as those involving issues of program-wide significance, may not be well suited for the use of Borrower funded Consultants.

#### **§ 1789.156 Proposal procedure.**

(a) In the event RUS determines that consideration should be given to the use of a Borrower-funded consultant in connection with the review of an Application, the RUS Regional Director or the Director of the Power Supply Division, as appropriate, will discuss with the Borrower the nature of the Application and the projected review period required of RUS. If RUS concludes that the projected review period will not result in timely action on the Application, and after being so notified in writing by RUS the Borrower wishes to fund consultant services to facilitate RUS review, the Borrower shall submit to the same Director a funding proposal. The proposal shall set forth the following:

(1) Identification in the heading or caption as a Notice of Proposal to Fund Consulting Services;

(2) Borrower's REA/RUS designation;

(3) Borrower's legal name and address;

(4) A description of the Application, critical issues and concerns relating to the Application, time deadlines, and the consequences of any delays in RUS review;

(5) A description of the consulting service(s) that would facilitate timely RUS review of the Application; and

(6) Such additional documents and information as RUS may request.

(b) RUS will review the Notice of Proposal to Fund and any additional information RUS deems relevant in determining whether to proceed with procuring Borrower funded Consultants. If RUS proposes to utilize Legal Consultants, RUS must obtain the concurrence of the Office of General Counsel (OGC) of the Department of Agriculture. RUS will notify the Borrower in writing of its determination.

#### **§ 1789.157 Consultant contract.**

(a) The Federal Acquisition Regulation (FAR), 48 CFR Ch. 1, and the Agriculture Acquisition Regulation (AGAR), 48 CFR Ch. 4, shall apply to all Consultant Contracts entered into pursuant to this part except as provided in this section.

(1) Contracts for Legal Consultants shall provide for a technical representative from OGC.

(2) All Consultant Contracts shall provide for an escrow account funding mechanism pursuant to this part and for the government's sole discretion in determining whether payments are to be made from the Escrow Account to the Consultant.

(3) All Consultant Contracts shall provide that payment of all obligations for work performed thereunder must be satisfied by amounts available in the Escrow Account; with the exception of the annual retainer fee, if any, Consultants shall not be entitled to any payments from the government.

(b) The provisions of paragraph (a) of this section shall be given prominent emphasis in requests for proposals issued under this part.

#### **§ 1789.158 Implementation.**

(a) Upon making a determination to go forward with Borrower funding for consulting services, RUS shall initiate a procurement request for a Consultant to provide the services. The government may either contract with a Consultant on a case by case basis or elect to use a Consultant pursuant to an outstanding

Retainer Contract. The Borrower will not be informed of the Consultant selected until such time as the government provides the information set forth in paragraph (c)(3) of this section.

(b) If the government determines to contract with a Consultant on a case by case basis, the government shall notify the Borrower of the applicable procedures.

(c) If the government determines to contract with a Consultant under an outstanding Retainer Contract, the following procedures will normally apply:

(1) Pursuant to the terms of the contract, the government will prepare a draft Task Order requesting consultant services in connection with the review of the Borrower's Application. The draft Task Order shall set forth for the Consultant's review and acceptance, a description of the services to be provided and applicable time frames for the provision of such services.

(2) The government will request that the Consultant:

(i) Notify the government as to the acceptability of the form and substance of the draft Task Order;

(ii) Notify the government as to its ability to provide a satisfactory conflict of interest certification consistent with the requirements of the FAR (48 CFR ch. 1); and

(iii) Provide a cost estimate for the draft Task Order.

(3) When the government is satisfied with the response(s) received pursuant to paragraph (c)(2) of this section, the government shall promptly provide to the Borrower:

(i) A copy of the draft Task Order identifying the Consultant;

(ii) The Consultant's cost estimate for the draft Task Order; and

(iii) Contract information required to enable the Borrower to develop a Funding Agreement, an Escrow Agreement and an Indemnification Agreement (the "agreements").

(4) The Borrower shall develop and submit to the government for approval executed originals of:

(i) The agreements; and

(ii) A certified copy of a resolution of the board of directors authorizing the Borrower to enter into the agreements and to take such other action as is necessary to effect the purposes of the agreements.

(5) Upon receiving written RUS approval of the agreements and the form and substance of the board resolution, the Borrower shall:

(i) Establish and fund the Escrow Account; and

(ii) Provide written notice to the government of the Escrow Account

number, the funding thereof, and such other information as required pursuant to the agreements.

(6) After the Borrower has funded the Escrow Account, the government shall issue Task Order(s) for consultant services in accordance with the terms and conditions of the applicable Retainer Contract.

#### **§ 1789.159 Contract administration.**

The government shall be solely responsible for the administration of a Consulting Contract and shall have complete control over the scope of the Consultant's work, the timetable for performance, the standards to be applied in determining the acceptability of deliverables and the approval of payment of Invoices.

#### **§ 1789.160 Access to information.**

The Borrower shall not have rights in nor right of access to the work product of the Consultant. All analyses, studies, opinions, memoranda, and other documents and information provided by the Consultant pursuant to a Consulting Contract may be released and made available to the Borrower only with the approval of RUS. This section does not restrict release of information by RUS pursuant to the Freedom of Information Act (5 U.S.C. 552(a)(2)) or other legal process.

#### **§ 1789.161 Conflicts of interest.**

The standard for determining organizational conflicts of interest shall be as set forth in the FAR subpart 9.5 (48 CFR part 9, subpart 9.5); however, the identification of the existence of an organizational conflict of interest may be made by either the Administrator or the cognizant Contracting Officer. In the event an organizational conflict of interest is determined to exist, the cognizant Contracting Officer shall take the actions prescribed at FAR 9.504 (48 CFR 9.504) to attempt to avoid, neutralize or mitigate the conflict. Should these actions be deemed by the Administrator and the Contracting Officer to adequately resolve the conflict, the contracting action with the offeror/contractor may proceed. Should the Administrator or the Contracting Officer determine that an organizational conflict of interest still exists such that contract award or other contracting action cannot be taken (award of task/delivery order, etc.) the offeror/contractor shall be so informed by the Contracting Officer and be provided a reasonable opportunity to respond in accordance with FAR 9.504(e) (48 CFR 9.504(e)). After considering the contractor's response, if it is found by both the Administrator and Contracting

Officer to remedy the conflict of interest, the contracting action may proceed. If the Administrator and Contracting Officer determine that the contractor's response does not resolve the conflict of interest, yet continuing with the contracting action with the offeror/contractor in question is considered in the best interest of the United States, a waiver in accordance with FAR 9.503 (48 CFR 9.503) may be executed. This waiver shall be submitted under the Contracting Officer's signature and approved by the Administrator. The Administrator has been delegated Head of Contracting Activity authority by the USDA Senior Procurement Executive solely for the purpose of waiver approval.

#### **§ 1789.162 Indemnification agreement.**

As a condition of approving Borrower funding, the government will require the Borrower to enter into an Indemnification Agreement, in form and substance satisfactory to RUS, providing that the Borrower will indemnify and hold harmless the government and any officers, agents or employees of the government from any and all liability, including costs, fees, and settlements arising out of, or in any way connected with the payment of the Consultant's fee pursuant to the Consultant Contract. The Indemnification Agreement may recognize, as a condition of liability thereunder, the rights of the borrower to prompt notice, to use of counsel of its own choosing, and to participation in any settlement of a claim against which indemnification is sought.

#### **§ 1789.163 Waiver.**

RUS may waive any requirement or procedure of this subpart by determining that its application in a particular situation would not be in the government's interest, except that certain provision that the subject contracts are subject to the provisions of the FAR (48 CFR ch. 1) and AGAR (48 CFR ch. 4).

#### **§§ 1789.164—1789.165 [Reserved]**

### **Subpart B—Escrow Account Funding and Payments**

#### **§ 1789.166 Terms and conditions of funding agreement.**

Funding Agreements between the Borrower and a Consultant shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

(a) Specific reference by number to the applicable Consulting Contract entered into between the government and the Consultant;

(b) Specific reference by number to the applicable Task Order (where applicable);

(c) A brief description of the Application;

(d) A requirement that Invoices make specific reference to:

(1) The applicable contract and Task Order(s); and

(2) The Escrow Account from which payment is to be made;

(e) A requirement that the Final Invoice for a Task Order be clearly identified as such;

(f) A description of the services to be provided by the Consultant to RUS and the applicable time frames for the provision of such services;

(g) Agreement that the Borrower shall pay for the Consultant services provided to RUS under the applicable contract through an Escrow Account established pursuant to an Escrow Agreement, the Consultant shall not provide services to RUS under the applicable contract unless there are sufficient funds in the Escrow Account to pay for such services, the Consultant shall seek compensation for services provided under the applicable contract from, and only from, funds made available through the Escrow Account, and the Consultant must submit all Invoices to the government for approval.

(h) A form of Escrow Agreement satisfactory to the Borrower, Consultant and the designated Third-party Commercial Institution;

(i) A schedule setting forth when and in what amounts the Borrower shall fund the Escrow Account;

(j) Acknowledgment by the Consultant of the Indemnification Agreement provided by the Borrower to the government; and

(k) The Funding Agreement shall not be effective unless and until approved in writing by RUS.

#### **§ 1789.167 Terms and conditions of escrow agreement.**

Escrow Agreements between and among the Borrower, Consultant and Third-party Commercial Institution shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

(a) Specific reference by number to the applicable contract for services;

(b) Specific reference by number to the applicable Task Order;

(c) Specific reference by number to the Escrow Account into which funds are to be deposited;

(d) Invoices to specifically identify the applicable contract and Task Order(s);

(e) Funds to be held in the Escrow Account by the escrow agent until paid

to the Consultant pursuant to the government's authorization;

(f) The Escrow Account to be closed and all remaining funds remitted to the Borrower after payment of the Final Invoice, unless otherwise directed by the government;

(g) The government, the Consultant and the Borrower to have the right to be informed, in a timely manner and in such form as they may reasonably request, as to the status of and activity in the Escrow Account; and

(h) The Escrow Agreement shall not be effective unless and until approved in writing by RUS.

#### **§§ 1789.168–1789.175 [Reserved]**

Dated: September 6, 1996.

Jill Long Thompson,

*Under Secretary, Rural Development.*

[FR Doc. 96–23512 Filed 9–13–96; 8:45 am]

BILLING CODE 3410–15–P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 29**

**[Docket No. 96–ASW–5; Special Condition 29–ASW–19]**

#### **Special Condition: Aerospatiale Model SA–365N, SA–365N1, and AS–365N2 “Dauphin” Helicopters, Electronic Flight Instrument System and Digital Standby Instrument System**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final special condition; request for comments.

**SUMMARY:** This special condition is issued for these Aerospatiale Model SA–365N, SA–365N1, and AS–365N2 “Dauphin” helicopters. These helicopters will have a novel or unusual design feature associated with the Electronic Flight Instrument System and with the digital standby system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

**DATES:** Effective September 16, 1996. Comments must be received on or before October 16, 1996.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation

Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket No. 96–ASW–5, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments must be marked Docket No. 96–ASW–5. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. Robert McCallister, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110; telephone (817) 222–5121.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delay delivery of the affected helicopter. These notice and comment procedures are also considered unnecessary since the public has been previously provided with a substantial number of opportunities to comment on substantially identical special conditions, and their comments have been fully considered. Therefore, good cause exists for making this special condition effective upon issuance.

#### **Comments Invited**

Although this final special condition was not subject to notice and opportunity for prior public comment, comments are invited on this final special condition. Interested persons are invited to comment on this final special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption “ADDRESSES.” All communications received on or before the closing date for comments will be considered. This special condition may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. 96–ASW–5.” The postcard