

funding as provided under paragraph (b) of this section.

(b) In the event that approval of all eligible applications would result in expenditures in excess of the \$50 million, FSA shall reduce the payment for each slaughter hog and feeder pig in such manner as FSA, in its sole discretion, finds fair and reasonable.

#### **§ 761.7 Appeals.**

Any hog operation which is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 11 of this title and part 780 of this title.

#### **§ 761.8 Misrepresentation and scheme or device.**

(a) A hog operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a hog operation engaged in a misrepresentation, scheme, or device, or to any other person as a result of the hog operation's actions, shall be refunded with interest together with such other sums as may become due. Any hog operation or person engaged in acts prohibited by this section and any hog operation or person receiving payment under this part shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

#### **§ 761.9 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible operator of a hog operation shall be eligible for assistance under this part only if such operation meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 761.10 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a hog operation that is eligible to receive benefits in accordance with this part, such hog operation may receive such benefits.

#### **§ 761.11 Maintaining records.**

Hog operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein and the number of head of slaughter hogs and feeder pigs sold during the marketing period. Such records and accounts must be retained for at least 3 years after the date of the cash payment to hog operations under this program.

#### **§ 761.12 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all payments made under this part to any hog operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a hog operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this part.

(c) Interest shall be applicable to refunds required of the hog operation if FSA determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date FSA made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the hog operation.

(d) Interest determined in accordance with paragraph (c) of this section shall not be applicable to refunds required of the hog operation because of unintentional misaction on the part of the hog operation, as determined by FSA.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 792.

(f) Hog operations must refund to FSA any excess payments made by FSA with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Signed at Washington, DC, on February 4, 1999.

**Parks Shackelford,**

*Acting Administrator, Farm Service Agency.*

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## **DEPARTMENT OF AGRICULTURE**

### **Rural Utilities Service**

#### **7 CFR Part 1755**

#### **Telecommunications Program Standard Contract Forms**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations to change the manner in which it publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, engineering services, or architectural services financed through loans made or guaranteed by RUS. The required contract forms are currently published in the text format in the Code of Federal Regulations (CFR). This direct final rule will eliminate this unnecessary and burdensome publication in the CFR.

**DATES:** This rule will become effective March 29, 1999 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 12, 1999. If we receive such comments or notice, we will publish a timely notice in the **Federal Register** stating that the rule will not become effective. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments to Orren E. Cameron, III,

Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1598, Washington, DC 20250-1598. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Norberto Esteves, Chairman, Technical Standards Committee A (Telecommunications), Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1598, Washington, DC 20250-1598, telephone number 202-720-0699, fax number 202-720-4099, E-mail [nesteves@rus.usda.gov](mailto:nesteves@rus.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

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

**Executive Order 12988**

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

**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 by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to 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 that exceed any direct economic costs associated with complying with RUS regulations and requirements.

**Information Collection and Recordkeeping Requirements**

This final rule contains no new information collection or recordkeeping

requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**Catalog of Federal Domestic Assistance**

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 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.

**Executive Order 12372**

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) exempted RUS loans and loan guarantees from coverage under this order determined that RUS loans and loan guarantees, and RTB bank loans, were not covered by Executive Order 12372.

**Unfunded Mandates**

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

**National Environmental Policy Act Certification**

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.

**Background**

RUS is changing the manner in which it publishes the standard contract forms borrowers are required to use when contracting for construction, procurement, architectural, or engineering services financed through loans made or guaranteed by RUS or RTB.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard contract forms promulgated by RUS for construction, procurement,

engineering services, and architectural services financed by a loan made or guaranteed by RUS. Currently, RUS implements these provisions of its loan agreement through parts 1753 and 1755. Part 1753 generally prescribes when and how borrowers are required to use RUS standard contract forms and part 1755 lists RUS standard contract forms. All of the contract forms are available, in a format suitable for use as a contract, from RUS or the Government Printing Office (GPO). An RUS borrower required by part 1753 to use a contract form must use the contract form in that format available from RUS or GPO. RUS believes that the current system of publishing the complete text of the contract forms in the CFR is unnecessary and that, consistent with the agency's objective to streamline regulatory text and to provide borrowers with a user-friendly regulatory system, the complete text of the required contract forms should no longer be published in the CFR.

Rather than published the complete text in the CFR, RUS will identify in § 1755.30(c) all required contract forms. To the extent the RUS may be required to publish its contract forms pursuant to section 552(a) of the Administrative Procedure Act (APA) (5 U.S.C. 552(a)) or otherwise, such requirement is met by identification of the standard contract forms in part 1755. Moreover, RUS provides all borrowers actual notice of the contract forms they are required to use in contracting. As this rule states in part 1755, upon initially entering a loan agreement with RUS, borrowers are provided with copies of contract forms. Thereafter, should RUS promulgate new or revised standard contract form(s), following the procedures discussed below, RUS will revise the list of standard forms as set forth in part 1755 and send the new or revised standard forms to all affected borrowers by regular or electronic mail. Borrowers, as well as the public, can obtain copies of all standard contract forms from RUS or GPO.

In addition to identifying standard forms and eliminating full text publication of each standard contract form in the CFR, RUS is clarifying the procedures that will be followed when RUS promulgates a new or revised standard contract form. To the extent that RUS is required by section 553 of the APA (5 U.S.C. § 553) or otherwise to provide notice in the **Federal Register** (FR) and an opportunity for public comment in promulgating standard contract forms, RUS will publish a FR notice of rulemaking announcing, as appropriate, a revision in, or a proposal to revise the list of standard contract

forms set forth in § 1755.30(c). The revision may change the existing list by, for example, identifying a new required contract form or changing the issuance date of the form listed. The supplementary information section of the FR notice will describe the substantive change in the identified standard contract form and may append the standard contract form or relevant portions thereof. As appropriate, the notice will provide an opportunity for interested persons to provide comments. RUS will send a copy of such FR notice by regular or electronic mail to all borrowers.

Finally, the final rule clarifies certain aspects of the requirement that borrowers use RUS standard contract forms. Absent an RUS waiver, borrowers are required to use those standard forms in effect as of the date the borrower issues the bid package to the bidders. Borrowers can determine the appropriate standard form based on the issuance date of the form as identified by the most recent published list set forth in § 1755.30(c). RUS may waive for good cause, on a case-by-case basis, the requirement to use RUS standard contract forms pursuant to procedures set forth in the regulation. A failure on the part of the borrower to use standard contract forms as prescribed in part 1753 or 1755 is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the loan agreement or otherwise. Consistent with the changes discussed above, RUS is amending those sections of existing regulations that currently set forth the full text of contracts for the purpose of deleting such text. Deletion of the full text from the CFR will not affect the requirement that borrowers use the prescribed contract forms.

#### List of Subjects in 7 CFR Part 1755

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

For reasons set out in the preamble, part 1755 of chapter XVII of title 7 of the Code of Federal Regulations, is amended as follows:

#### PART 1755—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1755 continues to read:

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

2. Sections 1755.26 through 1755.30 are added to read as follows:

#### § 1755.26 RUS standard contract forms.

(a) The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, borrowers shall use standard contract forms promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan or guaranteed by RUS. This part implements these provisions of the RUS loan agreement and prescribes the procedures that RUS follows in promulgating standard contract forms that borrowers are required to use. Part 1753 prescribes when and how borrowers are required to use these standard forms of contracts.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in § 1755.30(c), List of Standard Contract Forms, that borrowers are required to use.

#### § 1755.27 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guaranteed under the RE Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrowers agree to use RUS standard contract forms for construction, procurement, engineering services, and architectural services financed in whole or in part by the RUS loan. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those contract forms identified in the list of telecommunications standard contract forms, set forth in § 1755.30(c) of this part.

(b) *Compliance.* (1) If a borrower is required by part 1753 to use a listed contract form, the borrower shall use the listed contract form in the format available from RUS. The forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so as to indicate the difference from the listed contract form.

(2) The borrower may use electronic reproductions of a contract form if the contract documents submitted for RUS approval are exact reproductions of the RUS form and include the following certification by the borrower: I (Insert name of the person.), certify that the attached (Insert name of the contract form.), between (Insert name of the parties.), dated (Insert contract date.) is an exact reproduction of RUS Form (Insert form number), dated (Insert date of RUS form).

(Signature)

(Title)

(Employer's Address)

(c) *Amendment.* Where a borrower has entered into a contract in the form required by 7 CFR part 1753, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case-by-case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking an RUS waiver must provide RUS with a written request explaining the need for the waiver.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in 7 CFR part 1753 is a violation of the terms of the loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

#### § 1755.28 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the borrower's address as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are published by RUS. Interested parties may obtain the forms from the Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, Washington DC 20250-1522, telephone number (202) 720-8674. The list of contract forms can be found in § 1755.30(c).

#### § 1755.29 Promulgation of new or revised contract forms.

RUS may, from time to time, promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish a notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1755.30(c), List of telecommunications standard contract forms. The amendment may change the existing identification of a listed contract form by, for example, changing the issuance date of the listed contract form or identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or substantive change in the listed contract form, as the

case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. RUS shall send, by regular or electronic mail, a copy of each such **Federal Register** document to all borrowers.

**§ 1755.30 List of telecommunications standard contract forms.**

(a) *General.* The following is a list of RUS telecommunications program standard contract forms for procurement, construction, engineering services, and architectural services. Borrowers are required to use these contract forms by the terms of their RUS loan agreements implemented by part 1753 and this part.

(b) *Issuance Date.* Where part 1753 requires the use of a standard contract form in connection with RUS financing, the borrower shall use the appropriate form identified in § 1755.30(c), List of Telecommunications Standard Contract Forms, published as of the date the borrower releases the plans and specifications to solicit bids or price quotes.

(c) *List of telecommunications standard contract forms.*

(1) RUS Form 157, issued 10-77, Construction Work Plan and cost Distribution—Telephone.

(2) RUS Form 158, issued 10-77, Certification of Contract or Force Account Approval.

(3) RUS Form 159, issued 10-77, Summary of Completed Construction.

(4) RUS Form 168b, issued 3-62, Contractor's Bond.

(5) RUS Form 168c, issued 4-79, Contractor's Bond.

(6) RUS Form 181, issued 4-72, Certificate of Completion, Contract Construction Buildings.

(7) RUS Form 181a, issued 3-66, Certificate of Completion (Force Account Construction).

(8) RUS Form 213, issued 8-52, Certificate (Buy American).

(9) RUS Form 216, issued 7-67, Construction Change Order.

(10) RUS Form 217, issued 3-97, Postloan Engineering Services Contract—Telecommunications Systems.

(11) RUS Form 220, issued 6-98, Architectural Services Contract.

(12) RUS Form 224, issued 3-55, Waiver and Release of Lien.

(13) RUS Form 231, issued 4-72, Certificate of Contractor.

(14) RUS Form 238, issued 4-72, Construction or Equipment Contract Amendment.

(15) RUS Form 242, issued 11-58, Assignment of Engineering Service Contract.

(16) RUS Form 245, issued 11-75, Engineering Services Contract, Special Services—Telephone.

(17) RUS Form 257, issued 3-73, Contract to Construct Buildings.

(18) RUS Form 257a, issued 10-69, Contractor's Bond.

(19) RUS Form 274, issued 6-81, Bidder's Qualifications.

(20) RUS Form 276, issued 5-59, Bidder's Qualifications for Buried Plant Construction.

(21) RUS Form 281 issued 5-61, Tabulation of Materials Furnished by Borrower.

(22) RUS Form 282, issued 11-53, Subcontract (Under Construction or Equipment Contracts).

(23) RUS Form 284, issued 4-72, Final Statement of Cost for Architectural Service and Certificate of Architect.

(24) RUS Form 307, issued 4-60, Bid Bond.

(25) RUS Form 396, issued 3-64, Certificate of Completion—Special Equipment Contract (Including Installation).

(26) RUS Form 396a, issued 3-64, Certificate of Completion—Special Equipment Contract (Not Including Installation).

(27) RUS Form 397, issued 12-67, Special Equipment Contract (Including Installation).

(28) RUS Form 397f, issued 2-63, Contractor's Bond (Special Telephone Equipment).

(29) Addendum No. 1 to RUS Form 397, issued 7-78, Special Equipment Contract (Including Installation).

(30) RUS Form 398, issued 11-62, Special Equipment Contract (Not Including Installation).

(31) RUS Form 399, issued 8-82, Supplemental Agreement to Equipment Contract for Field Trial.

(32) RUS Form 399a, issued 8-82, Supplemental Agreement to Equipment Contract for Field Trial (Secondary-Delivery, Installation, Operation).

(33) RUS Form 506, issued 3-97, Statement of Engineering Fee—Telecommunications.

(34) RUS Form 515, issued 1-90, Telephone System Construction Contract (Labor and Materials).

(35) RUS Form 517, issued 9-64, Results of Acceptance Tests

(36) RUS Form 525, issued 7-94, Central Office Equipment Contract (Including Installation).

(37) Addendum to RUS Form 525, issued 7-94, Central Office Equipment Contract (Including Installation) and RUS Form 545 Central Office Equipment Contract (Not Including Installation).

(38) RUS Form 525a, issued 10-62, Contractor's Bond (Central Office Equipment).

(39) RUS Form 526, issued 8-66, Construction Contract Amendment.

(40) RUS Form 527, issued 3-71, Statement of Construction, Telephone System "Outside Plant."

(41) RUS Form 545, issued 9-66, Central Office Equipment Contract (Not including Installation).

(42) RUS Form 553, issued 5-67, Check List for Review of Plans and Specifications.

(43) RUS Form 724 issued 10-63, Final Inventory, Telephone Construction Contract.

(44) RUS Form 724a issued 4-61, Final Inventory, Telephone Construction—Telephone Construction Contract (Labor and Materials), columns 1-8.

(45) RUS Form 724b issued 3-61, Final Inventory, Telephone Construction Contract (Labor and Materials), columns 9-14.

(46) RUS Form 744, issued 2-62, Certificate of Contractor and Indemnity Agreement.

(47) RUS Form 752a, issued 5-66, Certificate of Completion Central Office Equipment-Not Including Installation.

(48) RUS Form 754, issued 6-66, Certificate of Completion and Certificate of Contractor and Indemnity Agreement.

(49) RUS Form 771, Issued 10-75, Summary of Work Orders (Inspected by RUS Field Engineer).

(50) RUS Form 771a, issued 10-75, Summary of Work Orders (Inspected by Licensed Engineer or Borrower's Staff Engineer).

(51) RUS Form 773, issued 12-90, Miscellaneous Construction Work and Maintenance Services Contract.

(52) RUS Form 787, issued 8-63, Supplement A to Construction Contract.

(53) RUS Form 817, issued 6-60, Final Inventory, Telephone Force Account Construction.

(54) RUS Form 817a, issued 6-60, Final Inventory, Telephone Force Account Construction, columns 1-8.

(55) RUS Form 817b, issued 6-60, Final Inventory, Telephone Force Account Construction, Columns 9-14.

(56) RUS Form 835, issued 3-66, Preloan Engineering Service Contract, Telephone System Design.

**§§ 1755.93, 1755.217, and 1755.525 [Removed and Reserved]**

3. Sections 1755.93, 1755.217, and 1755.525 are removed and reserved.

Dated: January 24, 1999.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 99-3163 Filed 2-9-99; 8:45 am]

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