

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1753

RIN 0572-AB34

Telecommunications System Construction Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to revise its regulations on telecommunications system construction policies and procedures. This revision includes empowering the telecommunications borrowers by reducing oversight by RUS with respect to preparation of plans and specifications, bid approvals, and final document approvals. In addition to reducing the requirements for facilities construction, RUS will also make technical corrections and clarifications, and minor technical changes.

DATES: Public comments must be received by RUS or bear a postmark or equivalent, no later than September 15, 1998.

ADDRESSES: Written comments should be sent to Orren E. Cameron, III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2835-S, STOP 1598, Washington, DC 20250-1598. Telephone: (202) 720-8663. 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:

Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 2835-S, Stop 1598, Washington, DC 20250-1598. Telephone (202) 720-8663. E-Mail: ecameron@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

RUS had determined that this proposed 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 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 exceed any direct economic costs associated with complying with RUS regulations and requirements. Moreover, this action liberalizes certain contract requirements by changing contract limits thereby reducing RUS oversight requirements and further offsetting economic costs.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments on this information collection must be received by September 15, 1998.

Comments are invited in: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

For further information contact Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1598, Washington, DC 20250-1598. Telephone: (202) 720-8663. FAX: (202) 720-4099. E-Mail: ecameron@rus.usda.gov.

Title: Telecommunications Standards/Specifications Acceptance, Telecommunications Field Trials, and Telecommunications Contract Forms.

OMB Number: 0572-0059.

Type of Request: Amendment.

Abstract: The Rural Utilities Service (RUS) proposes to revise its regulations on telecommunications system construction policies and procedures. This revision includes empowering the telecommunications borrowers by reducing oversight by RUS with respect to preparation of plans and specifications, bid approvals, and final document approvals and transferring those approval authorities to borrowers and their consulting engineers. In addition, this revision updates the regulation to include headquarters building financing which was reauthorized under certain loan programs in the Rural Electrification Loan Restructuring Act of 1993, and clarifies the manner in which RUS waives postloan engineering and construction requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Business or other for profit and non-profit institutions.

Estimated Number of Respondents: 212.

Estimated Number of Responses per Respondents: 25.

Estimated Total Annual Burden on Respondents: 3,356 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 720-0812.

Send comments regarding this information collection requirement to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, 1400 Independence Ave., SW., Room 4034,

Stop 1522, Washington, DC 20250–1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal Register**. All comments will become a matter of public record.

National Environmental Policy Act Certification

RUS has determined that this proposed 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 proposed 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, United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Proposed 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.

Unfunded Mandates

This rule contains no Federal Mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments of the private sector. Thus today's rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandate Reform Act.

Background

RUS has undertaken a strategic review of all policies and procedures covering its preloan and postloan requirements of borrowers. This review was part of RUS efforts in governmental streamlining and empowering the recipients of the loans provided under the Rural Electrification Act (RE Act) of 1936, (U.S.C. 901 *et seq.*), as amended. As a result of this review, several procedures and policies were deemed no longer necessary. Other policies and

procedures have been streamlined and RUS proposes to place more responsibility with the borrowers to insure a more cost effective review process while maintaining the required loan security. In view of this increased reliance upon borrowers and their consultants, certain provisions have been added to reduce the government's vulnerability to conflicts of interest. Provisions have also been added for construction of headquarters facilities pursuant to the Rural Electrification Loan Restructuring Act of 1993 (107 Stat. 1356).

RUS further proposes to make technical corrections to final regulations which were reorganized and redesignated on September 27, 1990, at 55 FR 39393. In particular, certain regulations contained cross references which inadvertently had not been updated. This action is simply a correction to these regulations with no change to substance. Changes to regulatory text are merely to update cross references. As currently published, the final regulations may prove to be misleading.

List of Subjects in 7 CFR Part 1753

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

For reasons set forth in the preamble, 7 CFR chapter XVII is amended as follows:

PART 1753—TELECOMMUNICATION SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 continues to read as follows:

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

2. In § 1753.1, paragraph (a) is revised to read as follows:

§ 1753.1 General

(a) The standard RUS Telecommunications Loan Documents contain provisions regarding procurement of materials and equipment and construction of telecommunications facilities by telecommunications borrowers. This part 1753 implements certain of the provisions by setting forth requirements and procedures. Borrowers shall follow these requirements and procedures whenever using loan funds to purchase materials and equipment or perform construction, unless they have received the Administrator's written approval to do otherwise.

* * * * *

3. In § 1753.2, a new definition of “loan purposes” is added, and the definitions of “major construction”, “minor construction” and “modernization plan” are revised, to read as follows:

§ 1753.2 Definitions.

* * * * *

Loan purposes—The high level objectives of the loan which is funding the construction. These purposes are first stated in the characteristics letter described in 7 CFR 1737.80, which is sent to the applicant to offer a loan after RUS has completed its preloan studies. These purposes are restated in the loan contract.

Major construction—A telecommunications plant project estimated to cost more than \$250,000, including all labor and materials.

Minor construction—A telecommunications plant project estimated to cost \$250,000 or less, including all labor and materials.

* * * * *

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 7 CFR part 1751, subpart B.

* * * * *

4. The first word of § 1753.3(a) is revised from “prior” to read “advance”.

5. In § 1753.5, paragraph (b)(1) is revised, paragraph (b)(2) is redesignated (b)(3), and a new paragraph (b)(2) is added, to read as follows:

§ 1753.5 Methods of major construction.

* * * * *

(b) Contract construction. (1) RUS approval of the borrower's award of the contract is not required if the contractor is selected through sealed competitive bidding, the bid amount is \$500,000 or less and the contractor is not a company or organization affiliated with the borrower. This does not relieve the borrower of the requirements for bidding or bid evaluation set forth in this part.

(2) RUS approval of the borrower's award of the contract is required for all other competitively-bid and for negotiated major construction contracts.

* * * * *

6. In § 1753.6, paragraph (e) is added to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

* * * * *

(e) All software, software systems, and firmware financed with loan funds must

be year 2000 compliant, as defined in 7 CFR 1732.22(e).

7. In § 1753.7, paragraphs (c) and (e) are revised to read as follows:

§ 1753.7 Plans and specifications (P&S).

* * * * *

(c) The appropriate standards and specifications listed in 7 CFR part 1755 shall be included in the P&S. When RUS has not prepared standards and specifications, the borrower shall use general engineering requirements and specifications prepared by the borrower's engineer. The specifications prepared by the borrower's engineer and based on general engineering requirements shall be subject to review and approval by RUS for all major construction, including major projects which would be exempted from RUS approval under § 1753.7(e).

* * * * *

(e) RUS approval of the P&S is required for construction that is estimated to cost over \$500,000 or 25% of the total loan, whichever is less, and for all building construction. P&S for all other construction are exempt from RUS review and approval except that, at the time of contract approval, RUS will examine the plans and specifications for conformity with the loan purposes and to determine that they comply with other requirements of this part.

* * * * *

8. In § 1753.8, paragraphs (a)(1), (a)(11)(i), (a)(11)(ii) introductory text, (a)(11)(iii) introductory text, and (a)(12)(i) are revised, and a new paragraph (a)(11)(iv) is added, to read as follows:

§ 1753.8 Contract construction procedures.

(a) Sealed, competitive bidding—(1) *Bid opening date:* The borrower is responsible for scheduling the bid opening date. If RUS review of the P&S is required by § 1753.7, the borrower shall wait until approval has been received before setting the date. In setting the date, sufficient time should be allowed for the bidders to examine the project site and prepare their bids. The borrower shall notify the GFR of the bid date and invite the GFR to attend.

* * * * *

(11) *Award of contract:* (i) The borrower shall obtain from the engineer the determination of the lowest responsive bid, a tabulation of all bids and the engineer's recommendation for award of the contract. Contract award is subject to RUS approval if either the cost of the project is over \$500,000 or the contract is with an organization affiliated with the borrower. Contract award of all other projects is not subject to RUS approval.

(ii) If an award is made, the borrower shall award the contract to the lowest responsive bidder. The borrower may award the contract immediately upon determination of the lowest responsive bidder if the following conditions are met:

* * * * *

(iii) If RUS approval of the award of contract is required under this paragraph (a)(11), the borrower shall send to RUS for consideration of approval of the award:

* * * * *

(iv) If RUS approval of the award of contract is not required under this paragraph (a)(11), the borrower shall keep a file available for inspection by RUS. The file shall be kept for at least two years and shall include:

(A) One copy of all received bids.

(B) The engineer's recommendation and tabulation of all bids including "Buy American" evaluations, if any, and all other evaluations required by law.

(C) Evidence of acceptance of the low bid by the borrower, such as a copy of the board resolution certified by the Secretary of the board.

(12) *Execution of contract:* (i) The borrower shall submit to RUS three original counterparts of the contract executed by the contractor and borrower.

* * * * *

9. In § 1753.11, paragraphs (a)(3), (b) and (d) are revised to read as follows:

§ 1753.11 Contract amendments.

(a) * * *

(3) The amendment causes an unbonded contract to require a contractor's performance bond. This would occur when a contract that is executed in an amount below that requiring a performance bond in 7 CFR part 1788, subpart C, is amended to an amount above that amount.

(b) Advance RUS approval to execute other contract amendments is not required. These amendments may be submitted to RUS at any time prior to closeout. If a borrower wishes to receive an advance of funds based on an amended contract amount (i.e., amendments that increase a contract by less than 20%), the borrower may initiate an increase in the amount approved for advance by submitting three copies of the amendment to RUS for approval.

* * * * *

(d) Upon execution of any amendment that causes the amended contract amount to exceed the original contract amount by 20% or more, three copies of the amendment shall be submitted to RUS for approval.

* * * * *

10. In § 1753.15, paragraphs (a)(1), (a)(4)(i) and (a)(4)(ii) are revised, and a new paragraph (a)(2) is added, paragraphs (a)(2) through (a)(5) are redesignated (a)(3) through (a)(6) respectively, and a new paragraph (a)(2) is added, to read as follows:

§ 1753.15 General.

(a)(1) The standard RUS Loan Documents contain provisions regarding engineering and architectural services performed by or for RUS telephone borrowers. This part implements certain of the provisions by setting forth the requirements and procedures to be followed by borrowers in selecting architects and engineers and obtaining architectural and engineering services by contract or by force account.

(2) Borrowers shall obtain architectural and engineering services only from persons or firms which are not affiliated with, and have not represented, a contractor, vendor or manufacturer who may provide labor, materials, or equipment to the borrower under any current loan.

* * * * *

(5)(i) For major construction, services provided by architects and engineers not on the borrower's staff must be provided under Form 220, Architectural Service Contract, or Form 217, Postloan Engineering Service Contract—Telecommunications. These contracts require RUS approval.

(ii) For minor construction, borrowers may use the contracts in paragraph (a)(5)(i) of this section for postloan architectural or engineering services or any other form of contract, such as Form 245, Engineering Service Contract, Special Services-Telephone. RUS approval of contracts for postloan architectural or engineering services associated with minor construction, except for buildings covered in paragraph (a)(6) of this section, is not required.

* * * * *

11. In § 1753.16, paragraphs (b)(1) through (b)(4) are revised, to read as follows:

§ 1753.16 Architectural services.

(a) * * *

(b)(1) The borrower shall use Form 220 when contracting for architectural services for major construction, except that the borrower may use either Form 220 or Form 217 if the building is an unattended central office building.

(2) The borrower and the architect negotiate the fees for services under the Form 220 contract.

(3) Reasonable modifications or additions to the terms and provisions in Form 220 may be made, subject to RUS approval, to obtain the specific services needed for a building.

(4)(i) Three copies of Form 220, executed by the borrower and the architect, shall be sent to the GFR to be forwarded to RUS for approval. RUS will review the contract terms and conditions. RUS will not approve the contract if, in RUS's judgement:

(A) Unacceptable modifications have been made to the contract form.

(B) The contract will not accomplish loan purposes.

(C) The architectural service fees are unreasonable.

(D) The contract presents unacceptable loan security risk to RUS.

(ii) If RUS approves the contract, RUS will send one copy to the architect and one copy to the borrower.

* * * * *

12. In § 1753.17(b)(1)(ii)(D), remove "(See 7 CFR part 1758)". Paragraph (b)(1)(ii)(E), is added, and paragraphs (c)(1)(i)(C) and (c)(2)(i)(A) are revised, to read as follows:

§ 1753.17 Engineering services.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(E) The consulting engineering firm is affiliated with or has represented a contractor, vendor, or manufacturer who may provide labor, materials, or equipment to the borrower under any current loan.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) The names, qualifications, and responsibilities of other principal employees who will be associated with providing the engineering services.

* * * * *

(2) * * *

(i) * * *

(A) A copy of the employee's qualifications and experience record, unless previously submitted. RUS requires a minimum of four years of construction and inspection experience. The employee cannot be engaged in the actual construction.

* * * * *

13. A new § 1753.18 is added to read as follows:

§ 1753.18 Engineer/Architect contract closeout certifications.

A certification of completion and inspection of construction, required elsewhere in this part, signed by the

borrower and countersigned in accordance with accepted professional engineering and architectural practice, by the engineer or architect, shall be prepared as evidence of completion of a major construction project. This certification shall make reference to the contract number and contract amount, and shall include the following:

(a) A statement that the construction is complete and was done in accordance with the RUS approved system design or layout or subsequent RUS approved changes.

(b) A statement that the construction was for loan purposes.

(c) A statement that construction used RUS-accepted materials and was in accordance with specifications published by RUS covering the construction which were in effect when the contract was executed, or in the absence of such specifications, that it meets other applicable specifications and standards (specify), and that it meets all applicable national and local code requirements as to strength and safety.

(d) A statement that the construction complies with the "Buy American" provision (7 U.S.C. 903 note) of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.).

(e) A statement that all necessary approvals have been obtained from regulatory bodies and other entities with jurisdiction over the project.

(f) A statement that all closeout documents required in this part have been examined and found complete such that the Contractor has fulfilled all obligations under the contract except for warranty coverage.

(g) A statement that the engineer or architect is not affiliated with and does not represent the contractor, vendor, or manufacturer who is a participant in the contract.

14. In § 1753.25, paragraphs (a), (c) and (d) are revised as follows:

§ 1753.25 General

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in constructing headquarters, commercial office, central office, warehouse, and garage buildings with loan funds.

* * * * *

(c) All plans and specifications for buildings to be constructed with loan funds are subject to the approval of RUS. In addition, preliminary plans and specifications for headquarters and commercial office buildings to be constructed with loan funds are subject to RUS approval.

(d) RUS Form 257, Contract to Construct Buildings, shall be used for the construction of all headquarters, commercial office, central office, warehouse, and garage buildings with loan funds. Refer to § 1753.26 for further instructions.

* * * * *

15. In § 1753.26, paragraphs (a) through (d) are redesignated (b) through (e) respectively, redesignated paragraph (b)(1) is revised, and a new paragraph (a) is added, to read as follows:

§ 1753.26 Plans and specifications (P&S).

(a) For headquarters and commercial office buildings only, the borrower shall prepare preliminary P&S showing the floor plan and general architectural details of the building to be constructed using loan funds. In particular, the preliminary P&S shall address the requirements of § 1753.25(f) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.). These P&S shall be submitted to the GFR and are subject to RUS approval.

(b) * * *

(1) RUS Contract Form 257, Contract to Construct Buildings, completed to the extent explained in paragraph (c) of this section.

* * * * *

16. In § 1753.30, paragraphs (b), (c)(2), (c)(3) and (d) are revised to read as follows:

§ 1753.30 Closeout procedures.

* * * * *

(b) *RUS Form 257 Contract.* (1) Whenever changes were made in the plans and specifications which did not require immediate submission to RUS of an amendment under § 1753.11, a final contract amendment showing the changes shall be prepared.

(2) Upon completion of the project, the borrower shall obtain certifications from the licensed architect or engineer that the project and all required documentation are satisfactory and complete. The requirements for this certification are set forth in § 1753.18.

(3) The engineer's or architect's contract closeout certification and the final amendment shall be submitted to RUS as a basis for the final advance of funds for the contract.

(c) * * *

(2) Complete, with the assistance of its architect or engineer, the documents listed in the following table that are required for the closeout of force account construction.

DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

RUS form No.	Description	Use with		No. of copies prepared by		Distribution	
		Contract	Force account.	Contractor	Architect/engineer	Borrower	Contractor
238	Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval.).	X	(3)	.....	.....	(to RUS)	
181	Certificate of Completion (Contract Construction) ¹ .	X	.....	.....	2	1	1
231	Certificate of Contractor	X	.....	1	.....	1	.....
224	Waiver and Release of Lien from each Supplier.	X	.....	1	.....	1	.....
213	Certificate (Buy American)	X	.....	1	.....	1	.....
None ²	"As Built" Plans and Specifications ...	X	X	.....	1	1	.....
None	Guarantees, Warranties, Bonds, Operating or Maintenance Instructions, et certera.	X	.....	1	.....	1	.....
None	Architect/Engineer seismic safety certification.	X	X	.....	2	1	1

¹ Cost of materials and services furnished by borrower are not to be included in Total Cost on RUS Form 181.

² When only minor changes were made during construction, two copies of a statement to that effect from the Architect will be accepted instead of the "as built" Plans and Specifications.

(3) Make distribution of the completed documents as indicated in the table in this section.

(d) After all required RUS approvals are obtained, final payment is made in accordance with Article III of RUS Form 257 once the borrower has received the architect's or engineer's certifications regarding satisfactory completion of the project.

17. In § 1753.37, paragraph (c) is revised to read as follows:

§ 1753.37 Plans and specifications (P&S).

(c) RUS review of P&S is required for construction estimated to cost over \$500,000 total or estimated to cost more than 25% of the total loan.

(1) If RUS review is required, the borrower shall submit one copy of the P&S to the GFR for RUS review.

(2) RUS will review the P&S and notify the borrower in writing of approval or disapproval.

18. In § 1753.38, paragraphs (a)(1)(i), (a)(1)(v), (a)(2)(i), (a)(2)(v), (b)(1), (b)(3), (b)(5), (e)(2), and (e)(3) are revised, to read as follows:

§ 1753.38 Procurement procedures.

(a) * * *

(1) *Solicitation of bids.* (i) After RUS approval of the specifications and equipment requirements (required only for projects exceeding \$500,000 or 25% of the loan), the borrower shall send "Notice and Instructions to Bidders" to suppliers with central office equipment included in the current Informational Publication (I.P.) 300-4, "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers." I.P. 300-4 is a subscription item available from the Superintendent

of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954. This "Notice" may also be sent to suppliers of non-domestic equipment currently accepted by RUS as meeting RUS technical standards. The "Notice" may also be sent to suppliers of central office equipment accepted for field trial.

* * * * *

(v) At the request of an invited supplier, the borrower shall provide two copies of the P&S.

(2) *Technical sessions.* (i) The borrower shall schedule individual technical sessions by the suppliers, notify each supplier of its scheduled date and time, notify the GFR of all scheduled dates and times, and request the following be available at the technical session:

* * * * *

(v) After evaluation of the technical proposals and RUS approval of the changes to the P&S (required only for projects that exceed \$500,000 or 25% of the loan), sealed bids shall be solicited from only those bidders whose technical proposals meet the P&S requirements. When fewer than three bidders are adjudged qualified by the borrower to bid, RUS approval must be obtained to proceed. Generally, RUS will grant such approval only if the borrower can demonstrate to the satisfaction of RUS that a good faith effort was made to obtain at least three competitive bids. This would be demonstrated if all suppliers currently listed in I.P. 300-4 were invited to submit technical proposals. This could not be demonstrated if a listed supplier of

central office equipment was not invited.

* * * * *

(b) * * *

(1) After RUS approval of the P&S and equipment requirements (required only for contracts expected to exceed \$500,000 or 25% of the loan), the borrower shall send two complete copies of the approved P&S to the supplier and request that a proposal be submitted.

* * * * *

(3) If the contract is expected to exceed \$500,000 or 25% of the loan, changes in the P&S resulting from the technical session shall be subject to RUS review and approval.

* * * * *

(5) The borrower shall obtain an award recommendation from its engineer.

* * * * *

(e) * * *

(2) The borrower shall prepare a plan containing an outline of the proposed use of the equipment, the proposal from the supplier and an estimate of the installation cost. If the total cost exceeds \$500,000, RUS approval of the award of contract is required. The borrower shall in this case submit its plan and the supplier's proposal to the GFR. If the cost does not exceed \$500,000, the borrower's award of contract is not subject to RUS approval.

(3) If RUS approval was required in paragraph (e)(2) of this section, upon RUS approval the purchase may be made using RUS Contract Form 525 or 545, or when applicable, the procedures contained in subpart I of this part.

* * * * *

19. In § 1753.39, paragraphs (a), (e)(1), (e)(2), (f), (f)(1)(ii)(A), (f)(1)(iii), (f)(1)(iv) and (g) are revised, paragraph (e)(3) is deleted, and paragraph (h) is added, to read as follows:

§ 1753.39 Closeout documents.

* * * * *

(a) *Contract amendments.*

Amendments that must be submitted to RUS for approval, as required by

§ 1753.11, shall be submitted promptly. All other amendments may be submitted to RUS with the engineer's contract closeout certification.

* * * * *

(e) * * *

(1) Obtain from the engineer a certification of partial closeout.

(2) Submit one copy of the summary to RUS with an FRS.

(f) Final contract closeout procedure. The documents required for the final closeout of the central office equipment contracts, RUS Contract Forms 525 and 545, are listed in the following table, which also indicates the number of copies and their distribution. The procedure to be followed is outlined as follows:

DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT

RUS form No.	Description	Use with		Prepared by		Distribution	
		RUS form 525	RUS form 545	Contractor	Engineer	Borrower	Contractor
238	Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval).	X	X	.....	(3)	(to RUS)	
754	Certificate of Completion and Certificate of Contractor and Indemnity Agreement (if submitted, Form 744 is not required).	X	.....	3	3	2	1
517	Results of Acceptance Tests (Prepare and distribute copies immediately upon completion of the acceptance tests of each central office).	X	.....	.....	2	1	1
752a	Certificate of Completion—Not Including Installation.	.....	X	.....	2	1	1
224	Waiver and Release of Lien (from each supplier).	X	.....	1	.....	1	
231	Certificate of Contractor	X	.....	1	.....	1	
213	Certificate (Buy American)	X	X	1	.....	1	
None	Switching Diagram, as installed	X	X	2	.....	2	
None	Set of Drawings (Each set to include all the drawings required under the Specification, RUS Form 522).	X	X	2	.....	2	

(1) * * *

(ii) * * *

(A) Prepare and assemble the documents listed in the table in this section, Documents Required to Close Out Central Office Equipment Contracts.

* * * * *

(iii) Make the documents listed in the table available for GFR review on the date of final inspection.

(iv) Distribute the documents as indicated in the table, including submission to the GFR of all documents required by RUS.

* * * * *

(g) Once RUS approval has been obtained for any required amendments, the borrower shall obtain certifications from the licensed engineer that the project and all required documentation are satisfactory and complete. The requirements for the final contract certification are set forth in § 1753.18.

(h) Once these certifications have been received, final payment shall be made according to the payment terms of the contract. Copies of the certifications shall be submitted with the FRS,

requesting the remaining funds on the contract.

20. In § 1753.46, paragraphs (c)(2) and (c)(3) are revised to read as follows:

§ 1753.46 General.

* * * * *

(c) * * *

(2) Contract Form 515, which is for less than \$250,000, may, at the borrower's option, be negotiated. See § 1753.48(b).

(3) Form 773 may be used for minor outside plant projects which are not competitively bid because they cannot be designed and staked at the time of contract execution. Projects of this nature include routine line extensions and placement of subscriber drops. See Subpart I of this part.

21. In § 1753.47, paragraph (c) is revised to read as follows:

§ 1753.47 Plans and specifications (P&S).

* * * * *

(c) *Submission of plans and specifications to RUS.* (1) If the project does not exceed \$500,000 or 25% of the loan, the borrower shall furnish the GFR

one set of the P&S and one copy of the "Checklist for Review of Plans and Specifications," RUS Form 553, signed by the engineer. The borrower may then proceed with procurement in accordance with § 1753.48.

(2) If the project exceeds \$500,000 or 25% of the loan, RUS approval of the P&S is required. Two (2) sets of the P&S and one copy of the "Check List for Review and Plans and Specifications," RUS Form 553, signed by the borrower's engineer, shall be furnished to the GFR. RUS will return one set to the borrower upon notice of approval. The borrower may then proceed with procurement in accordance with § 1753.48.

22. In § 1753.48, paragraphs (a)(4) and (b)(1) are revised to read as follows:

§ 1753.48 Procurement procedures.

(a) * * *

(4) *Bid openings.* (i) Bid openings and award of the contract shall be conducted in accordance with § 1753.5(b)(1) and § 1753.8(a).

(ii) If § 1753.8 requires RUS approval of award of the bid, the borrower shall submit to RUS two copies of the

assembly unit sections of the apparent lowest responsive bid accepted by the borrower.

(b) *Negotiated procurement.* (1) Competitive bids are not required for outside plant construction that is estimated to cost less than \$250,000 labor and materials. If the contract

exceeds \$500,000 or 25% of the loan, the borrower shall obtain RUS approval of the plans and specifications before it begins negotiating with a contractor.

* * * * *

23. In § 1753.49, paragraphs (b), (c)(2) and (c)(3) are revised, to read as follows:

§ 1753.49 Closeout documents.

* * * * *

(b) *Documents required.* The following table lists the documents required to closeout the Form 515 construction contract.

DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION CONTRACT RUS FORM 515

RUS Form No.	Description	No. of copies prepared by		Distribution	
		Contractor	Engineer	Borrower	Contractor
724	Final Inventory—Certificate of Completion .....	.....	2	1	1
724a	Final Inventory—Assembly Units .....	.....	2	1	1
None	Contractor's Bond Extension (Send to RUS when required.)	(3) .....	.....	(to RUS)	.....
281	Tabulation of Materials Furnished by Borrower	2	.....	1	1
213	Certificate—"Buy American"	1	.....	1	.....
None	Listing of Construction Change Orders .....	.....	1	1	.....
224	Waiver and Release of Lien (from each supplier)	1	.....	1	.....
231	Certificate of Contractor	1	.....	1	.....
527	Final Statement of Construction .....	.....	2	1	1
None	Reports on Results of Acceptance Tests .....	.....	1	1	1
None	Set of Final Staking Sheets .....	.....	1	1	.....
None	Tabulation of Staking Sheets .....	.....	1	1	.....
None	Correction Summary (legible copy) .....	.....	1	1	.....
None	Treated Forest Products Inspection Reports or Certificates of Compliance (prepared by inspection company or supplier).	.....	.....	1	.....
None	Final Key Map (when applicable) .....	.....	1	1	.....
None	Final Central Office Area and Town Maps .....	.....	1	1	.....

(c) * * *

(2) *Final inventory documents.* (i) The borrower shall obtain certifications from the licensed engineer that the project and all required documentation are satisfactory and complete. Requirements

for these contract closeout certifications are set forth in § 1753.18.

(ii) The borrower shall prepare and distribute the final inventory documents as indicated in the tables in this section. The documents listed for RUS shall be

retained by the borrower for inspection by RUS for at least two years from the date of the engineer's contract closeout certification.

STEP-BY-STEP PROCEDURE FOR CLOSEOUT OF CONSTRUCTION CONTRACT RUS FORM 515

Sequence		By	Procedure
Step No.	When		
1	Upon completion of construction.	Borrower's Engineer	Prepares the following: a set of Detail Maps and a set (when applicable) of Key Maps which show in red the work done under the 515 contract; a Tabulation of Staking Sheets; and a tentative Final Inventory, RUS Forms 724 and 724a.
2	After acceptance tests made.	Borrower's Engineer	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection. Schedules inspection date.
3	Upon receipt of letter from Borrower's Engineer.	GFR	Advise borrower whether attending the final inspection will be possible.
4	By inspection date	Borrower's Engineer	Obtains and makes available the following documents: a set of "as constructed" detail maps and (when applicable) "as built" key maps; a list of construction change orders; the final staking sheets; the tabulation staking sheets; the treated forest products inspection reports or certificates of compliance; the tentative final inventory, RUS Forms 724 and 724a; the tentative tabulation, RUS Form 231(if borrower furnished part of material); and, a report of results of acceptance tests.
5	During inspection	Borrower's Engineer	Issues instructions to contractor covering corrections to be made in construction as a result of inspection.
6	During inspection	Contractor	Corrects construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
7	During inspection	Borrower's Engineer	Inspects and approves corrected construction. Marks inspected areas on the key map, if available, otherwise on the detail maps.
8	Upon completion of inspection.	Borrower's Engineer	Prepares or obtains all the closeout documents listed in Table 3.

STEP-BY-STEP PROCEDURE FOR CLOSEOUT OF CONSTRUCTION CONTRACT RUS FORM 515—Continued

Sequence		By	Procedure
Step No.	When		
9	After signing final inventory.	Borrower	Prepares and submits to RUS the engineer's certifications of completion and a Financial Requirement Statement, RUS Form 481, requesting amount necessary to make final payment due under contract.
10	On receipt of final advance.	Borrower	Promptly forwards check for final payment to contractor.
11	During subsequent loan fund audit review following final payment.	RUS Field Accountant ...	Examines borrower's construction records for compliance with the construction contract and Subpart F, and examines RUS Form 281 (Tabulation of Materials Furnished by Borrower) if any, for appropriate costs.

(iii) When the total inventory price exceeds the maximum contract by more than 20 percent, an extension to the contractor's bond is required.

(iv) The borrower shall submit the engineer's contract closeout certification with the FRS for the final advance of funds.

(3) Final payment shall be made according to the payment provisions of Article III of RUS Form 515, except that certificates and other documents required to be submitted to or approved by the Administrator shall be submitted to and approved by the Owner.

24. Section 1753.50 is removed and reserved.

25. In § 1753.58, paragraphs (b), (c)(2) and (c)(5) are revised to read as follows:

§ 1753.58 Closeout documents.

* * * * *

(b) *Documents.* The documents required to close the FAP are listed in the following table. The following is a brief description of the closeout documents:

DOCUMENTS REQUIRED TO CLOSEOUT FORCE ACCOUNT OUTSIDE PLANT CONSTRUCTION

RUS Form No.	Description
817, 817a, 817b.	Final Inventory Force Account Construction and Certificate of Engineer. Submit one copy to RUS, if required. ¹
213	Certificate—"Buy American" (as applicable from each supplier).
None	Detail Maps.
None	Key map, if applicable.
None	Staking Sheets.
None	Tabulation of staking sheets.

DOCUMENTS REQUIRED TO CLOSEOUT FORCE ACCOUNT OUTSIDE PLANT CONSTRUCTION—Continued

RUS Form No.	Description
None	Treated Forest Products Inspection Reports or Certificates of Compliance (prepared by inspection company or supplier).

¹ RUS Forms 817, 817a, and 817b are to be submitted to the GFR only if required in paragraph (c)(5) of this section. Otherwise, the final inventory documents are to be assembled and retained by the borrower for at least two years.

(c) * * *

(2) The GFR shall be invited to make the final inspection accompanied by the engineer and the borrower.

* * * * *

(5) After inspection, the final inventory documents shall be assembled as indicated in the table in this section. RUS Forms 817, 817a, and 817b are to be submitted to the GFR only if the amount of the closeout exceeds the original force account proposal by 20% or more. Otherwise, the final inventory documents are to be assembled and retained by the borrower for at least two years.

* * * * *

26. In § 1753.68, paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), (b)(2)(v), (b)(4)(i), (b)(4)(ii), (c)(2), and (d)(3) are revised to read as follows:

§ 1753.68 Purchasing special equipment.

* * * * *

(b) * * *

(2) *Initial equipment purchase.* (i) The borrower prepares the P&S and, for projects estimated to exceed \$500,000 or 25% of the loan, whichever is less, sends two copies to the GFR for approval.

(ii) For projects estimated to exceed \$500,000 or 25% of the loan, RUS will either approve the P&S in writing or notify the borrower of any reason for withholding approval.

(iii) For projects estimated to cost less than \$500,000 or 25% of the loan, the borrower may proceed with procurement upon completion of the P&S.

(iv) If the borrower has employed full competitive bidding in the selection, a contract may be executed with the successful bidder and the borrower may proceed to paragraph (b)(2)(vi) of this section.

(v) If the borrower did not follow a fully competitive bidding process as described in § 1753.8, the selection, along with a summary of all proposals and an engineer's recommendation, shall be sent to RUS. RUS shall approve the proposal selection in writing or notify the borrower of any reason for withholding approval.

* * * * *

(4) *New system additions.* (i) The borrower prepares the P&S and, if the project is estimated to exceed \$500,000 or 25% of the loan, sends two copies to the GFR for approval. The borrower may request RUS approval to negotiate for the purpose of standardization on a system basis prior to preparing the P&S.

(ii) RUS notifies the borrower in writing as to whether the borrower may negotiate for specific equipment. If P&S were required to be submitted to RUS under paragraph (b)(4)(i) of this section, RUS notifies the borrower in writing of P&S approval (or notifies the borrower of any reason for withholding approval).

* * * * *

(c) * * *

(2) The borrower shall prepare any required amendments to the special equipment contract, arrange for the execution by all parties, and submit these amendments to RUS in accordance with § 1753.11(d). RUS Form 238, Construction or Equipment Contract Amendment, shall be used for this purpose.

* * * * *

(d) * * *

(3) *Closeout documents.* When the acceptance tests have been completed

and all deficiencies have been corrected, the borrower:

(i) Assembles and distributes the documents listed in the following table

that are required for the closeout of the special equipment contract. The documents listed for RUS shall be retained by the borrower for inspection

by RUS for at least two years from the date of the engineer's contract closeout certification.

DOCUMENTS REQUIRED TO CLOSEOUT SPECIAL EQUIPMENT CONTRACTS RUS FORMS 397 AND 398

RUS Form No.	Description	No. of copies prepared by					
		Form 397		Form 398		Distribution	
		Contractor	Engineer	Contractor	Engineer	Borrower	Contractor
238	Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval.).	.....	(3)	.....	(3)	(to RUS)	
396	Certificate of Completion—Special Equipment Contract (Including Installation).	.....	2	.....	.....	1	1
396a	Certificate of Completion—Special Equipment Contract (Not Including Installation).	.....	.....	.....	2	1	1
744	Certificate of Contractor and Indemnity Agreement.	1	.....	.....	.....	1	.....
213	Certificate (Buy American)	1	.....	1	.....	1	.....
None	Report in writing, including all measurements and other information required under Part II of the applicable specifications.	1	.....	.....	1	1	.....
None	Set of maintenance recommendations for all equipment furnished under the contract.	1	.....	1	.....	1	.....

(ii) Obtains certifications from the licensed engineer that the project and all required documentation are satisfactory and complete. Requirements for this contract closeout certification are set forth in § 1753.18.

(iii) Submits copies of the engineer's certifications to RUS with the FRS requesting the remaining funds on the contract.

(iv) Makes final payment in accordance with the payment terms of the contract.

27. In § 1753.76, paragraph (a) is revised to read as follows:

§ 1753.76 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and procedures to be followed by borrowers for minor construction of telecommunications facilities using RUS loan funds. Terms used in this subpart are defined in § 1753.2.

* * * * *

28. In § 1753.80, paragraph (b) is revised to read as follows:

§ 1753.80 Minor construction procedure.

* * * * *

(b) RUS financing under Form 773 contracts dated in the same calendar year is limited to the following amounts for the following discrete categories of minor construction. The date of the

Form 773 contract is the date the Form 773 contract is executed.

(1) For outside plant construction, the limit is \$500,000 or ten per cent (10%) of the borrower's previous calendar year's outside plant total construction, whichever is greater.

(2) For central office equipment, the limit is \$500,000.

(3) For special equipment and buildings, the limit is \$250,000.

* * * * *

29. Appendices A through F are removed.

Dated: July 8, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98-18759 Filed 7-16-98; 8:45 am]

BILLING CODE 3410-15-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150-AF81

Respiratory Protection and Controls To Restrict Internal Exposures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations regarding the use

of respiratory protection and other controls to restrict internal exposure to radioactive material. The proposed amendments are intended to make these regulations more consistent with the philosophy of controlling the sum of internal and external radiation exposure, reflect current guidance on respiratory protection from the American National Standards Institute (ANSI), and make the requirements less prescriptive without reducing worker protection. The proposed amendments would provide greater assurance that worker exposures will be maintained as low as is reasonably achievable (ALARA) and that recent technological advances in respiratory protection equipment and procedures are reflected in NRC regulations and are thus clearly approved for use by licensees.

DATES: Submit comments by September 30, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

The NRC staff specifically requests comment on whether the technical aspects of the rule should be addressed through alternative approaches other than the proposed rule, such as a simple