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Friday, June 17, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–28 of June 6, 1994

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Titles I–V of Public Law 103–87), I hereby certify that Russia and the Commonwealth of Independent States continue to make substantial progress toward the withdrawal of their armed forces from Latvia and Estonia.

You are authorized and directed to notify the Congress of this certification, and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 6, 1994.

[FR Doc. 94–14974
Filed 6–15–94; 3:38 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 59, No. 116
Friday, June 17, 1994

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final Rule.

SUMMARY: The Board is amending its practices and procedures by extending the regulatory time limits for filing initial appeals, class action appeals, motions for attorney fees, initial appeals raising issues of prohibited discrimination, and requests to review final decision under negotiated grievance procedures. The time limit for filing appeals with the Federal courts, as well as the Equal Employment Opportunity Commission, is currently greater than that of the Board. This change brings the Board's practices and procedures more in line with those entities and will also have the effect of making the Board's appellate processes more accessible to Federal employees.

DATES: Effective June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: This change in the Board's practices and procedures came about as a result of Executive Order 12866 of September 30, 1993, requiring agencies to ensure that regulations are effective, consistent, sensible, and understandable. The Board's review found that changing the time limit for filing initial appeals to its regional offices would be consistent with the legal and regulatory time limits for filing with the Federal Courts and the Equal Employment Opportunity Commission both of which can potentially review final decisions of the Board. The consistency created by this proposed change will help to eliminate possible confusion by Federal employees who file appeals with the Board.

The Board announced this change as a proposed rule at 59 FR 18764, April 20, 1994, and asked for comments. The Board received 29 comments from agency and union representatives. Twenty-two were in favor of or not opposed to the proposed amendments. There was significantly more support for the proposed amendments than opposition. While some commenters suggested alternatives to the proposed regulations, the Board has considered these suggestions and determined not to adopt them.

The Board has determined that this proposed regulatory action is not "significant" as defined by Executive Order 12866, and therefore, is not subject to review by the Office of Management and Budget.

The Board has also determined that this proposed regulatory action does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96354, 94 Stat. 1164, 5 U.S.C. 601–612).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil Rights, Government employees. Accordingly, 5 CFR part 1201 is amended as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

2. Section 1201.22 is amended by removing the number "20" in the first sentence of paragraph (b); and by adding in its place the number "30"; and by removing the number "25" from the second sentence of paragraph (b); and by adding in its place the number "35".

3. Section 1201.23 is amended by revising the "EXAMPLE:" paragraph to read as follows:

§ 1201.23 Computation of time.

* * * * *

Example: If an employee receives a decision notice that is effective on July 1, the 30-day period for filing an appeal starts to run on July 2. The filing ordinarily would be timely only if it is made by July 31. If July 31 is a Saturday, however, the last day for filing would be Monday, August 2.

4. Section 1201.27 is amended by removing the number "25" from the second sentence in paragraph (b); and adding in its place the number "35"; and by removing the number "25" from the last sentence is paragraph (b); and adding in its place the number "35".

§ 1201.37 [Amended]

5. Section 1201.37 is amended by removing the numbers "20" and "25" from the second sentence in paragraph (a)(3); and adding in their place the numbers "30" and "35" respectively.

§ 1201.154 [Amended]

6. Section 1201.154 is amended by removing the number "20" in paragraph (a); and adding in its place the number "30"; by removing the number "20" from paragraph (b)(1); and by adding in its place the number "30"; and by removing the number "25" from paragraph (d); and adding in its place the number "35".

Dated: June 14, 1994.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 94–14859 Filed 6–16–94; 8:45 am]
BILLING CODE 7400-01-M

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Board is amending its Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing. This amendment extends the time limit for filing an appeal of an agency action where the appellant first files a request for a stay of that action. This change will bring the filing time in initial whistleblower cases into line with filing times in the Board's appellate jurisdiction cases and will also have the effect of making the Board's appellate processes more accessible to Federal employees.

DATES: Effective June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: This change came about as a result of

Executive Order 12866, September 30, 1993, requiring agencies to insure that regulations are effective, consistent, sensible, and understandable. The Board's review found that changing the time limit for filing initial appeals to its regional offices would be consistent with the legal and regulatory time limits for filing with the Federal courts and the Equal Employment Opportunity Commission both of which can potentially review final decisions of the Board. The consistency created by this proposed change will help to eliminate possible confusion by Federal employees who file appeals with the Board.

The Board proposed the amendments to its practices and procedures at 59 FR 18502, April 19, 1994, and requested comments. The Board received 29 comments from agency and union representatives. Twenty-two were in favor of or not opposed to the amendments. While some commenters suggested alternatives to the proposed regulations, the Board has considered these suggestions and determined not to adopt them.

The Board has determined that this proposed regulatory action is not "significant" as defined by Executive Order 12866, and therefore, is not subject to review by the Office of Management and Budget.

The Board has also determined that this proposed regulatory action does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96354, 94 Stat. 1164, 5 U.S.C. 601–612).

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, 5 CFR part 1209 is amended as follows:

PART 1209—[AMENDED]

1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8) and 7701.

§ 1209.5 [Amended]

2. Section 1209.5 is amended by removing the number "20" in paragraph (c); and by adding in its place the number "30".

Dated: June 14, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94-14860 Filed 6-16-94; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 658

Farmland Protection Policy

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends part 658 of title 7 of the Code of Federal Regulations which implements the Farmland Protection Policy Act (FPPA). The amendments contained in this rule are necessary to enable the Department of Agriculture to effectively implement the FPPA, as amended. They request reports by federal agencies, recognize the statutory authority of a governor of a state to bring legal actions to enforce the FPPA, provide policy direction regarding federal assistance and federal programs, and they restore a subsection of the existing rule that was omitted from publication by clerical error.

EFFECTIVE DATE: This rule becomes effective June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Lloyd E. Wright, Director, Basin and Area Planning, Soil Conservation Service, PO Box 2890, Washington, DC 20013, telephone 202-720-2847.

SUPPLEMENTARY INFORMATION: The regulations of the United States Department of Agriculture (the Department) implementing the Farmland Protection Policy Act (FPPA) are contained in 7 CFR part 658. A proposed rule, setting forth several amendments to these regulations, was published for public comment on January 14, 1987, at 52 FR 1465. The comment period closed February 27, 1987, during which time nineteen sets of comments were received from five federal agencies; four state agencies; seven national organizations in the agricultural, resource conservation, and planning fields; one county board of supervisors; and two individuals.

The proposed rule, as discussed below, contained six amendments to the Department's existing regulations. Of these six amendments, three were being proposed as a result of the specific changes in the FPPA that Congress had enacted in section 1255 of the Food Security Act of 1985, Public Law 99-198, 99 Stat. 1518. Another amendment to the existing rule was to correct a clerical mistake. These four amendments, with minor changes, are made final by this rule.

The two remaining amendments, of the six included in the proposed rule, were not responses to any new direction enacted by Congress, but were the Department's proposals to change its policy in the interpretation of FPPA provisions. These two amendments were a departure from the policy that the Department had announced when the existing regulations were promulgated on July 5, 1984, 49 FR 27716. The existing sections of part 658 that would be changed by these two amendments are §§ 658.2(a) and 658.3(c). The rationale underlying the provisions of the existing regulations is set forth in the preamble of the final rule publication, which is found at 49 FR 27716–27724. The rationale for the proposed changes is set forth in the preamble of the proposed rule at 52 FR 1465–1468. After reviewing the policy considerations that led to the adoption of the existing regulations in 1984, as well as considering the proposed changes and the public comments to the proposed rule, the Department has concluded that the proposed amendments to § 658.2(a) should be adopted with some additional interpretive clarification, as discussed below.

In addition, the Department has concluded that § 658.3(c) should be amended as proposed to comport with the authority of a governor of a state to take action to enforce the provisions of the FPPA with regard to a policy or program of the affected state for the protection of farmland.

I. Background

The FPPA was enacted as Subtitle I, sections 1539–1549, of Title XV of the Agriculture and Food Act of 1981, Public Law 98-98, 7 U.S.C. 4201–4209. In enacting the FPPA, Congress found that the Nation's farmland was "a unique natural resource" and that each year, "a large among of the Nation's farmland" was being "irrevocably converted from actual or potential agricultural use to nonagricultural use," in many cases as a result of action taken or assisted by the federal government. The FPPA directs federal agencies to identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with state government, local government, and private programs and policies to protect farmland.

In order to guide the federal agencies in implementing the FPPA, section 1541(a) of the Act, 7 U.S.C. 4202(a), directs the Department of Agriculture, in cooperation with other departments, agencies, independent commissions, and other units of the federal government, to "develop criteria for identifying the effects of Federal programs on the conversion of farmland to nonagricultural uses." The Department issued these criteria in its current rule implementing the FPPA at 7 CFR 658.4 and 658.5. The FPPA also authorizes the Department to provide technical assistance to federal, state, and local government agencies to develop programs or policies to limit the conversion of productive farmland to nonagricultural uses, and this is covered in the current rule at 7 CFR 658.7.

In addition, section 1542 of the FPPA, 7 U.S.C. 4203, requires "each department, agency, independent commission, or other unit of the Federal Government" to review its laws, administrative rules, policies and procedures "to determine whether any provision thereof will prevent" the federal entity "from taking appropriate action to comply fully" with the FPPA, and to "develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy" of the FPPA.

The Act does not expressly require a federal agency to modify any project solely to avoid or minimize the effects of conversion of farmland to nonagricultural uses. The Act merely requires that, before taking or approving any action that would result in conversion of farmland as defined by the FPPA, the federal agency examine the effects of that action using the criteria which the Department of Agriculture has supplied and, if there are adverse effects, to consider alternatives to lessen those effects. Once the agency has completed this examination, it may proceed with a project that would convert farmland to nonagricultural uses.

As originally enacted, the FPPA contained a prohibition against the use of the Act as a basis for litigation. Section 1548 states that the FPPA "shall not be deemed to provide a basis" for any litigation "challenging a Federal project, program or other activity that may affect farmland." 7 U.S.C. 4209. In the 1985 amendments to the FPPA, Congress amended this section to allow the governor of a state to bring a suit to enforce compliance with section 1542 (7 U.S.C. 4202) and related regulations.

II. Discussion of the Existing Regulations to Implement the FPPA

The current regulations were promulgated principally to enable federal agencies, with the help of the Soil Conservation Service (SCS), to measure the adverse effects, if any, of their programs and projects on farmland. The SCS has developed a Farmland Conversion Impact Rating Form, Form AD–1006, for this purpose. A federal agency considering a project on or affecting farmland completes and submits a Form AD–1006 to a local SCS office. The SCS determines if the proposed site or sites contain farmland subject to the FPPA, i.e., farmland that is "prime," "unique," or of "statewide or local importance," as defined by the FPPA. If SCS determines that the site or sites are not subject to the Act, SCS returns the form to the agency with that determination noted.

However, if SCS determines that the FPPA applies, SCS measures the "relative value" of the site or sites as farmland on a scale of 0 to 100, enters this score on the Form AD–1006 and returns the form to the federal agency. At this stage, the agency prepares a site assessment using twelve criteria set forth in the rule. After scoring each of the criteria and arriving at a total site assessment score, up to a maximum of 160 points, the agency adds this site assessment score to the "relative value" score that was supplied by the SCS on the Form AD–1006. The higher the combined score, the more suitable the site would be for protection as farmland. On the other hand, if a site receives a combined score of less than 160 points, the regulation recommends that it be given only "a minimal level of consideration for protection" and that additional sites do not need to be evaluated as alternatives.

Although the primary purpose of the Department's regulations implementing the FPPA was to impart these criteria and the guidelines for their use by agencies, the rule, in addition, established the Department's policy as to the farmlands that are subject to the FPPA, and as to the effect that the FPPA could have on private parties and nonFederal units of government applying for federal assistance to convert farmland to nonagricultural uses.

With regard to the first matter, the FPPA's definition of "prime farmland," excludes "land already in or committed to urban development or water storage." Section 1540(c)(1)(A), 7 U.S.C. 4201(c)(1)(A). The current regulation, § 658.2(a), provides that prime farmland is "committed to urban development or water storage" if a local zoning code or ordinance or current local comprehensive land use plan designated this land for commercial or industrial use or for residential use that is not intended at the same time to protect farmland.

With regard to the second issue, the current regulation, § 658.3(c), sets forth the Department's determination that the FPPA does not authorize a federal agency to withhold assistance to a project solely because that project was going to convert farmland to nonagricultural uses.

III. Discussion of the Amendments to the Existing Regulations

A. The Two Amendments Necessary for the Annual FPPA Report to Congress

Section 1546 of the FPPA, as enacted in 1981 (99 Stat. 1343–1344), required the Secretary of Agriculture to report to Congress on the progress made in implementing the FPPA. Only one report was required; and it was due within one year after the date of enactment, December 22, 1981. Section 1546 provided that the report should include information on:

(1) The effects, if any, of federal programs, authorities, and administrative activities with respect to the protection of United States farmland; and

(2) The results of the reviews of existing policies and procedures required under section 1542(a) of the Act.

As amended by section 1255 of the Food Security Act of 1985, section 1546 (7 U.S.C. 4207) now requires an annual report due at the beginning of each calendar year. The existing regulation, which was published prior to the amendment of section 1546, does not include any provisions for an annual report to Congress. Further, under the existing regulation, once agencies have completed their site assessments on the Farmland Conversion Impact Rating Form (Form AD–1006), they retain these forms and proceed to make their own decisions regarding the use of the site for the project in question. They do not make a regular practice of returning the form or a copy of it to SCS. Thus, SCS receives no record of the agency's use of the form or the agency's ultimate decision on the project.

Similarly, the existing regulation does not require a federal agency to report regularly to the Department on the progress made with the review of current provisions of law, administrative rules and regulations, and policies and procedures applicable to the federal agency to determine whether any provision thereof will prevent such unit of the federal government from taking appropriate action to comply fully with the provisions of the FPPA. This review is required by section 1502(a) of the Act, 7 U.S.C. 4203(a).

Now that the Act requires an annual report that includes both the effects of federal activities on the protection of farmland and the reviews undertaken by agencies, it is necessary for the Department to modify its existing regulations. Accordingly, the proposed rule in 1987 included two amendments to the existing regulations to enable the Department to carry out its reporting obligations.

The first of these amendments would have added a new § 658.4(g) to request federal agencies to return a copy of their completed Form AD–1006 to SCS after a final decision on a project has been made. This amendment received support in comments from all nongovernmental organizations and individuals, from the State of Rhode Island Statewide Planning Program, and from the Clarke County (Virginia) Board of Supervisors. However, the response was different from federal and state agencies that work with Form AD–1006 and would be responsible for returning it to the SCS.

Two federal agencies, the Federal Highway Administration (FHWA) and the Department of Housing and Urban Development (HUD), and the Michigan Department of Transportation and that of Oklahoma expressed concern that this requirement would generate additional, burdensome paperwork. The FHWA suggested that only those forms in which the selected site had a score of more than 160 be returned to SCS. HUD proposed to advise SCS of any tracts of farmland for which financing of housing subdivisions was being approved, but said it would be hard-pressed to return a Form AD–1006 for each action taken by HUD, especially those involving individual mortgage insurance.

The Michigan Department of Transportation and that of Oklahoma made comments that were almost identical to one another. On federally supported highway projects requiring environmental assessments or impact statements, the Form AD–1006 is included in such documentation and SCS receives a copy of the final document. Lesser projects, on the other hand, do not require an environmental assessment or impact statement, because they are often categorically excluded from review by regulations implementing the National Environmental Policy Act. These projects "usually require only minor amounts of right-of-way and thus have a very minimal impact on prime farmland," the Oklahoma Department of Transportation stated. Both Michigan and Oklahoma objected to having to submit Form AD–1006 on these types of projects.

The Department recognizes that this change in its regulation may increase the paperwork requirement on federal public works and other federally, assisted programs that are already burdened with reporting requirements. Congress, however, directed that each year the Department is to report on the effects federal programs and actions are having on farmland, and the Department believes that collecting the Form AD–1006 data generated by the affected federal agencies is the best way to compile this information.

The Department has made changes in the final rule to reduce reporting burdens. Under the current rule, SCS determines whether the site or sites in question are of the type of farmland subject to the FPPA. Even in cases where SCS determines the FPPA does not apply and SCS returns a Form AD–1006 to the referring agency, further tracking of agency decisionmaking is carried out with a report back to SCS on the final decision regarding the initial referral. New procedures set forth in § 658.4(g), give agencies the option of referring questions of FPPA applicability to SCS or of making these determinations themselves, and in cases where SCS makes a negative determination, there is no further tracking of matters in which none of the alternatives involve farmland subject to the FPPA.

The second amendment to the existing regulations related to the annual reporting function is a new § 658.7(d). This new paragraph (d) will require each federal agency to report to the Chief of SCS the agency's progress during the prior fiscal year in reviewing its authorities, internal rules, policies and procedures, and the agency's development of proposals to bring its programs, authorities, and administrative activities into conformity with the FPPA, pursuant to section 1542 of the FPPA, 7 U.S.C. 4203.

This second amendment drew a pattern of comments similar to those offered for amendment one. The organizations and individuals who generally supported the amendments in the proposed rule were in support of this subsection. However, three of the federal agencies that would be required to make these yearly reports to SCS were critical.

The Farmers Home Administration (FmHA) proposed that once an agency has demonstrated that its programs, authorities, and administrative activities are in compliance with the FPPA, it should not be required to make an annual report. Rather, The FmHA asserted, such an agency should be requested to report only in a year in which it either plans to change its FPPA compliance process or undertakes a new program that may be subject to the FPPA.

The FHWA commented that a single report from an agency should be sufficient until any future revisions to the FPPA or the SCS regulations are made.

The Tennessee Valley Authority (TVA) asked for additional guidance concerning the type of information in the report, and recommended that the annual report be an assessment of the progress made in implementing the FPPA, without excessive and burdensome documentation of specific farmland conversion or protection activities.

The Department has incorporated the suggestion offered by the FmHA in the final rule. Although the request for an annual report will remain, once the agency has completed the review of its policies and procedures and revised them as needed to comply with the Act, no additional reports are requested. In years in which the agency has changed its FPPA compliance process, a report is requested.

As for the concern expressed by the TVA, the scope of the agencies' reports to SCS under the new § 658.7(d) is that which is established in section 1542 of the FPPA and which is set forth in the unchanged sections of the existing regulations, 7 CFR 658.7(a) and (b). In other words, the annual reports the agencies are to submit to SCS are to be limited to the reviews of laws, regulations, policies, and procedures that the agencies have conducted under section 1542(a) of the FPPA and the proposals for action, if any, that the agency has developed pursuant to section 1542(b). In addition, SCS will be receiving data from the agencies on their individual project decisions involving farmland, but this data will come from the various AD–1006 forms that the agencies are to return to SCS after making their action decisions.

B. Amendment to Recognize Change in Limitation on Litigation

Section 1255(b) of the Food Security Act of 1985, 99 Stat. 1518, amended section 1548 of the FPPA, 7 U.S.C. 4209, which originally prohibited states, local governments, and private parties using the FPPA as a basis to bring actions challenging Federal activities. Prior to the amendment, the language of section 1548 was as follows:

This subtitle shall not be deemed to provide a basis for any action, either legal or equitable, by any State, local unit of government, or any persons challenging a

Federal project, program, or other activity that may affect farmland. 95 Stat. 1344.

As amended, section 1548 (7 U.S.C. 4209) now reads as follows:

This subtitle shall not be deemed to provide a basis for any action, either legal or equitable, by any state, local unit of government, or any persons challenging a Federal project, program, or other activity that may affect farmland. 95 Stat. 1344.

This subtitle shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland: Provided, that the Governor of an affected State where a State policy or program exists to protect farmland may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 1541 of this subtitle and regulations issued pursuant thereto.

Accordingly, § 658.3(d) of the existing regulation, which is simply a restatement of section 1548 in its original form, needs to be amended to conform with section 1548, as amended. None of the commenting parties expressed opposition to the proposal for this change in the regulation, and it is incorporated in this rule.

C. Amendment to restore § 658.7(b)

When 7 CFR part 658 was published as a final rule in 1984, it was intended to include § 658.7(b), which simply incorporates the provision of section 1542(b) of the Act requiring the federal agencies to develop proposals for action to bring their programs, authorities, and administrative activities into conformity with the FPPA. However, in the draft of the rule submitted to the **Federal Register**, paragraph (b) was inadvertently omitted, leaving a gap between § 658.7(a) and § 658.7(c) as they appeared in the published rule at 49 FR 27727. The proposed rule of January 14, 1987 included an amendment to restore this missing paragraph. None of the commenting parties expressed opposition to this correction, and it is incorporated in the final rule.

D. Amendment to Change Definition of "Prime Farmland Committed to Urban Development of Water Storage"

The FPPA does not include all farmland under its protection. In section 1540(c), 7 U.S.C. 4201(c), the specific farmland covered by the FPPA is defined. This is farmland that is either "prime farmland," "unique farmland," or "farmland, other than prime or unique farmland, that is of statewide or local importance." Each one of these terms is further defined and qualified in the FPPA and, in the definition of "prime farmland, there is an exclusion of "land already in or committed to urban development or water storage." Federal agencies are not required to consider the impact of their projects on prime farmland that is "already in or committed to urban development or water storage," even if this land would otherwise fall within the definition of "prime farmland."

In developing the existing regulations, the Department adopted standards for determining if prime farmland is "already in urban development" and whether land, although not "in urban development," was nevertheless "committed to urban development." Under § 658.2(a) of the current regulation, prime farmland which had been zoned for nonagricultural use by a state or local government with jurisdiction over the land, or which was designated in a current state or local land use plan for nonagricultural use, is regarded as "committed to urban development." This would mean that projects on prime farmland in those areas would not have to be analyzed by agencies for their effect on prime farmland.

The Department noted in the preamble to the 1984 final rule, at 49 FR 27720, that land use planning and zoning "are prerogatives of state and local government, not the Federal Government," and supplied the following rationale for the conclusion that prime farmland under nonagricultural zoning or planning was excluded from the FPPA:

If a federal agency were required by the Act to assess the impacts of a project on prime farmland not yet in urban development but already designated by the state or local government for urban development through planning or zoning, the only purpose of the requirement would be for that agency to weigh alternative sites that would lessen the impact of the project on farmland. If the agency, based on its assessment pursuant to the Act, should then decide to refrain from building its project on the proposed site, it would be declining itself to use the proposed site for urban development when local or state planning or zoning had already declared urban uses to be acceptable on the site. This would be an intrusion by the Federal Government in the function of land use planning of state and local governments.

In the proposed rule, the Department offered for public comment a proposal that would abrogate the Department's previous interpretation of this question. In the definition of "prime farmland," there would no longer be an exclusion based solely on the designation of the land in a land use plan or zoning code or ordinance for nonagricultural uses. The proposed rule amendment would provide that once a project site had been analyzed and given a combined score of 160 points or less, it would be considered "committed to urban development" and thus no longer covered by the FPPA.

The preamble to the 1987 proposed rule, at 52 FR 1466–1467, cited three reasons for introducing these changes. First, it stated that the existing definition "is inconsistent with the definitions of prime farmland used in almost all other State and Federal programs which use the definition." Second, it noted that the existing definition requires the SCS district conservationists to review local plans and land use regulations and that many of them do not have the background in land use planning to make the proper determinations as to whether a given project site is truly "committed to urban development." Third, because land "committed to urban development" is excluded in the FPPA's definition of "prime farmland" but not from the FPPA's definitions of farmland that is "unique" or "of statewide or local importance," it is an anomaly that this type of "prime farmland" can be so easily and categorically put outside the reach of the FPPA while farmland that is "unique" or "of statewide or local importance" is covered by the FPPA despite the existence of zoning designations or land use plans that would allow urban development of such lands.

The comments on the proposed rule were sharply divided on whether the Department should change the identification of farmland "committed to urban development." The American Farmland Trust "strongly" supported the proposed change, calling the existing rule "confusing and inconsistent with the intent of the legislation." The Natural Resources Defense Council (NRDC) also supported the proposed change since it did not approve of farmland being excluded from the FPPA's coverage just because local land-use plans or zoning ordinances would allow urban development on it. This, the NRDC stated, would be an "arbitrary 'grandfather' exclusion * * * even where there is no current nonagricultural development and the prospect of future nonagricultural development is highly speculative." The American Land Resource Association agreed with the proposed change, claiming that the existing rule worked "inadequately" for protection of prime farmland and caused "unnecessary confusion among Federal agencies implementing the FPPA." The Farmers Home Administration and the Rhode Island Statewide Planning Program supported the change. Other commenting parties agreed with the change as part of their general support of all the amendments being proposed.

However, the Department of Housing and Urban Development (HUD), the Federal Highway Administration (FHWA), and the Michigan Department of Transportation opposed making the change in the Department's interpretation of farmland "committed to urban development." In particular, HUD devoted the principal thrust of its comments to this provision, objecting "strongly" to the change and outlining the importance of retaining the Department's current interpretation that land under planning or zoning for nonagricultural use was "committed to urban development." HUD stated:

This procedure ignores and undermines a local government's land use decisions made through zoning, comprehensive planning, and subdivision regulations which are adopted to guide and direct urban development and growth * * * By changing the definition of 'farmland committed to urban development' and requiring a Farmland Conversion Impact Rating (AD–1006) be prepared, which must result in an aggregated score of 160 points or less before it is considered 'farmland committed to urban development,' certainly qualified USDA as taking a "big brother" approach to local land use plans and decisions.

HUD explained that whenever an application for project assistance is submitted to HUD, it must receive approval of local authorities. Since 1985, HUD's principal method for issuing mortgage insurance on single, family homes in housing subdivisions has been to wait until the local government has approved the subdivision plan and construction of the necessary streets and water and sewer systems. Under the existing rule, HUD would not have to analyze this land as "prime farmland" under FPPA. HUD argued that under the proposed rule, it would be required to complete the AD–1006 form on this land, which it termed a "useless exercise" at that point.

Aside from the mechanics of the proposed amendment, HUD made these comments about the general problem of farmland protection measures that the agency might undertake:

In the single family housing program (which actions are most likely to be on the fringes of urban areas), preservation of farmland would require that we would have to either be involved in the local planning and zoning process at the earliest conceptual stages or by prohibitive and restrictive regulations which would withhold assistance for projects which had converted farmland to nonagricultural uses. Taking either action could easily be interpreted as an indirect way to regulate the use of private land or affect the property rights of the owners of such lands. We do not believe that to be the intent of Congress. Putting a penalty on the land, either directly or indirectly, could result in creating a greater housing shortage, especially for low and moderate income families who are the primary users of HUD mortgage housing programs.

The FHWA, likewise, objected to the proposal on the grounds that it would require preparation of a site assessment on every project that requires rights-of-way. This would require "an enormous amount of time and resources to be provided by Federal, State and/or local agencies" and in many cases there would be "no apparent justification." FHWA suggested that the same exclusion of farmland "committed to urban development" that the Department has applied to "prime farmland" should be applied to the other two categories in the FPPA, "unique" farmland and farmland "of local or statewide importance."

The Michigan Department of Transportation had similar objections. It explained that the current rule "screens out many projects and constitutes a real time savings * * * If the local entities have designated the land for other uses, it doesn't warrant a high degree of protection as resource base at the federal level." On the other hand, if the rule were changed, it would require site assessments of "each project that required rights-of-way."

As noted in the preamble to the proposed rule at 52 FR 1467, the zoning and land use plans that are applicable to a particular site will be considered in conjunction with other criteria that are designed to assess the degree to which the site is committed to urban development. In this way, the prerogatives of state and local government, as exercised in zoning codes and land use plans, will play a role in determining whether a site should be given further FPPA review. Because the amended regulations will neither prohibit the providing of federal assistance to convert farmland nor preclude the conversion of farmland through non-federal means, the Department believes that the amended rule, as proposed, will not interfere with local land use planning, and will assure that prime farmlands will, to the full extent of the law, be given appropriate consideration.

Under the current regulation, sites that contain prime farmland that otherwise would have been exempted due to being "in or committed to urban development" would have still been covered by the FPPA if the site also contained lands of statewide or local importance. The exclusion of lands "in or committed to urban development" would have limited effect. After consideration of the comments, the Department is amending the rule to apply the exemption for farmland "in or committed to urban development" to all four types of farmland. It is clear from the comments provided by a number of federal agencies that they are already applying the exemption to all four types of farmland. Section 658.2(a) is being revised to remove the word "prime" before the word "farmland," thereby, making the exemption apply to all farmland.

An AD–1006 for a site that is located in urban areas need not be sent to SCS for evaluation. In addition, some agencies would like to use available mapped information to make their determinations without sending a Form AD–1006 to SCS. To facilitate the use of such information, § 658.2(a) will be revised to clarify that farmland "already in" urban development or water storage may be identified by an area shown as "urbanized area" (UA) on the Census Bureau map, or shown as an urban tint outline or urban area map on U.S.G.S. topographical maps, or shown as urban-built-up on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not farmland and, therefore, are not subject to the Act. In addition, § 658.4(a) is being amended to clarify that federal agencies may determine whether or not a site contains farmland as defined in § 658.2(a) without sending a Form AD–1006 to SCS. Where SCS is asked to complete the land evaluation portion of Form AD–1006 before the Federal agency completes the site assessment portion, and SCS determines that the site is subject to the FPPA, then when SCS returns the form to the agency for completion of the site assessment portion, SCS will at the same time provide the agency with the requested information and data necessary for the Federal agency to complete and score the site assessment factor questions, and where the agency chooses to complete the site assessment portion of the form first, SCS will cooperate in providing timely information and data to enable the Federal agency to score the site assessment factor questions.

E. Amendment to Allow an Agency to Either Provide or Deny Assistance to a Project to Convert Farmland

The existing regulations, at § 658.3(c), interpret the extent to which an agency can use the FPPA as a basis for denying assistance to a project that would convert farmland. The paragraph reads as follows:

The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or nonfederal land, or in any way affect the property rights of owners of such land. The Act and these regulations do not provide authority for the withholding of federal assistance to convert farmland to nonagricultural uses. In case where either a private party or a nonfederal unit of government applies for federal assistance to convert farmland to a nonagricultural use, the federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that could avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the applicant wants to proceed with the conversion, the federal agency may not, on the basis of the Act or these regulations, refuse to provide the requested assistance.

The proposed rule contained an amendment that would change the Department's interpretation of the effect of the FPPA by revising this paragraph significantly. This amendment would drop the second sentence. In the closing sentence, instead of retaining the language that the federal agency "may not, on the basis of the Act or these regulations, refuse to provide the requested assistance," the new language would state that the agency, after doing the required analysis and following its internal policies or procedures, would be free to deny as well as provide the assistance. See 52 FR 1467.

The rationale for this proposed change; as stated in the preamble to the proposed rule at 52 FR 1466, is that the FPPA leaves to the discretion of each agency "the determination of whether the providing or the denial of Federal assistance for farmland conversion will, in a given situation, comply with the policy and purpose of the FPPA." It was further noted that the rule, as presently written, "may be misread as a limitation on the previously described discretion provided by Congress to Federal agencies," and thus the amendment was needed "to recognize that discretion and the general process through which it is exercised."

Under the current regulation, when private landowners as well as state and local governments apply for assistance for a project involving the conversion of farmland subject to the FPPA, the federal agency is required to examine the effects of the project and alternatives but may not, based on the FPPA, refuse to provide the assistance. The amendment in the proposed rule would avoid making this analysis a pointless exercise by removing the rigid restriction on agency deliberations and allowing the agency to use the FPPA analysis as a basis for withholding assistance to the project in order to achieve the policies and objectives of the Act.

None of the parties who commented raised opposition to this proposal to change the existing regulation. A number of them supported it vigorously or proposed that it be made even stronger. The FmHA suggested the rule should provide that "if a clear alternative exists to avoiding a proposed conversion of important farmland and the applicant for Federal assistance is unwilling to pursue such an alternative, the Federal agency cannot provide financial assistance." FmHA went on to argue that if the FPPA did not impose this "affirmative duty" on agencies to deny assistance, "then other significant provisions of the Act become meaningless, such as (1) the ability of a governor to bring action in Federal district court to enforce the requirements of the FPPA, and (2) the requirement that each Federal agency identify and report to Congress any provisions of law, administrative rules, regulations, policies, and procedures applicable to it which prevent it from complying fully with the FPPA. What can governors enforce, what possible legislative or regulatory conflicts can exist, if the FPPA allows a Federal agency total discretion in deciding whether or not to finance an unnecessary conversion of important farmland?"

The Natural Resources Defense Council, the American Land Resource Association, and the American Farmland Trust also supported the change and, like the FmHA, proposed that it contain requirements that federal assistance be withheld from nonagricultural development in cases where alternatives mitigating or avoiding prime farmland conversion are available.

The Department, after considering the comments, believes that the proposed rule amendment is necessary to achieve the intent of Congress under the FPPA and, therefore, adopts that amendment in this rule. The amended § 658.3(c) allows the various federal agencies to consider the particular facts relating to their proposed assistance activities and to decide, in light of the policies of the FPPA and their own authorities, which reasonable alternative action will best achieve their mission and comply with the FPPA.

In similar deference to the agency discretion provided by the FPPA, the Department has determined not to accept the recommendations for a complete withholding of federal assistance to convert farmland in situations where alternatives exists to avoid or mitigate the effects of conversion. There may be, specific situations, compelling reasons of national, state, or local importance that would outweigh the protective policies of the Act. The federal agencies, in exercising the responsibility provided by the FPPA, can best analyze the facts of those situations, and their discretion to do so should not be unnecessarily constrained.

The Department notes that the Congress, during deliberations on proposed amendments to the FPPA as part of the Food Security Act of 1985, Public Law 99–198, considered and rejected a ban on federal assistance to convert farmland in situations where reasonable alternatives to conversion exist. See H.R. Conf. Rep. No. 447, 99th Cong., 1st Sess. 472 (1985), reprinted in 1985 U.S. Code Cong. & Admin. News 2398. The final rule allows the intentions of Congress, as expressed in the FPPA and in the 1985 deliberations, to be carried out.

During consideration of the comments received on the proposed rule and in interagency discussions within the Department, a misunderstanding of the scope of the analysis required by the FPPA and the regulations surfaced. This related to the extent to which federal agencies are required to identify and assess the potential for future conversion of farmland as a result of present activities and assistance.

As with other natural resource or environmental evaluations, such as the analyses required by the National Environmental Policy Act, the scope of the review must be related to the scope of the activity under consideration. In complying with the requirements of section 1542 of the Act (7 U.S.C. 4203) that each federal agency review its programs, authorities, policies, and procedures and take appropriate measures to assure that they conform with the purposes of the FPPA, an agency may properly consider the broader implications that its programs and policies have toward the potential for future conversions of farmland to nonagricultural uses. However, in considering whether a specific project or assistance activity of the agency will result in the irreversible conversion of farmland, the focus will be on those direct and indirect effects of the activity that can be reasonably identified and evaluated. In a review of a specific activity which does not contain proposals for, nor necessarily lead to, future activities that may convert farmland, the potential activities may be too general or speculative to adequately identify and usefully consider. The scope of each evaluation is determined by the scope of the objectives and facts of the agency activity under consideration.

It should be noted that the guidance provided in § 658.3(c), as amended by this rule, regarding the providing of federal assistance to convert farmland clearly applies beyond situations where a federal agency has been requested to provide assistance. Federal activities that are the result of federal initiatives, rather than requests for federal assistance, necessarily involve the same farmland protection policy considerations. In a situation where a Federal agency is contemplating an action that would convert farmland to a nonagricultural use and which is not the result of a direct request for federal assistance, the federal agency may decide, after conducting the analysis required by the FPPA, not to proceed with the action in order to achieve the objectives of the FPPA.

Implementation of the policy objectives of the FPPA in the manner discussed above and as contained in this final rule not only respects the traditional deference to state and local land use decisionmaking reflected in the FPPA, but also comports with and furthers the principles of federalism contained in Executive Order No. 12612 of October 26, 1987, 52 FR 41685. Local zoning and land use plans will be considered in determining if a site has been committed to urban development. Further, a federal agency may support state and local efforts to protect farmland by deciding not to provide federal assistance that would be used to convert farmland.

The wording of § 658.3(c) has been slightly modified from that of the proposed rule to clarify that any agency policies or procedures for implementing the Act may be considered by an agency in deciding how to proceed with an activity.

F. Additional Considerations

Some federal agencies raised concerns as to actions subject to the Act. The current regulation, at § 658.2(c), provides an exemption for federal permitting, licensing, or rate approval programs. Federal regulatory activities are not considered as federal assistance that could convert farmland. Therefore, federal regulatory activities are exempted from the Act. For example, in cases where a Clean Water Act section 404 permittee is required by the Corps of Engineers to perform compensatory mitigation on farmed wetland, thereby converting the wetland actual or potential use of farmland to a nonagricultural use, that conversion is not subject to FPPA. In complying with § 658.7 (a) and (b), Federal agencies may identify those programs that they determine are not subject to the Act and provide details on how other programs will be implemented consistent with the Act.

As further clarification, it should be noted that only those actions that will or could convert farmland to nonagricultural uses are subject to the Act. Assistance provided to purchase, maintain, renovate, or replace a structure that already exists is not subject to the Act, because any conversion of farmland took place at the time the structure was constructed. The addition of minor new ancillary structures, such as garages or sheds, to *serve* existing structures is also not included under the Act. Even in cases where loans are made for new houses, that action is not subject to the FPPA if the request for assistance and commitment by the federal agency was made after the house was constructed. Likewise, once one Federal agency has performed an analysis under the FPPA for the conversion of a site, that agency's or a second Federal agency's determination with regard to additional assistance or actions on the same site do not require additional, redundant FPPA analysis. Section 658.4(h) is being added to the final rule to reflect this clarification.

Several federal agencies cited concern for the application of the FPPA to land acquisitions by these agencies, providing temporary, intermediate ownership by the Federal Government such as through foreclosure, the acquisition of assets of an insolvent thrift institution or through forfeiture in criminal law enforcement proceedings. They expressed concern for potential conflicts between their statutory responsibilities to obtain prompt, high value disposal of these assets and the analysis procedures required under the FPPA.

The definition of "Federal program" in the FPPA, 7 U.S.C. 4201(c)(4), extends the coverage of the FPPA to "acquiring, managing, or disposing of Federal lands and facilities." If an agency determines that its program does not result in a sufficient acquisition of legal or equitable title by the United States to characterize the property as "Federal land or facilities," then the agency may exclude such land through its own policies and procedures for implementing the FPPA.

However, the Department has determined that an interpretive clarification of the term "Federal land and facilities" as used in the definition of "Federal programs" covered by the FPPA would be useful. In that regard, the Department believes that the use of the word "Federal" to modify the words "land and facilities" indicates an intent by Congress to focus the scope of federal programs covered by the FPPA to lands and facilities acquired or managed by federal agencies as necessary proprietary elements of federal programs, such as national forests, national parks, or military bases. The use of the modifier "Federal" is significant; if the intent was to include the acquisition, management, or disposal of any land or facility by a federal agency, regardless of the purpose of the use of the land or facility, Congress could have omitted the modifier and simply stated, "acquiring, managing, or disposing of lands and facilities."

Accordingly, the Department has amended the definition of "Federal program" contained in § 658.2(c) to clarify that, for the purposes of the FPPA and these regulations, the phrase "acquiring, managing, or disposing of federal lands and facilities" refers to lands and facilities that are acquired, managed, or were used by a federal agency specifically in support of a federal activity or program. It does not include lands or facilities that are acquired, managed, or disposed of by a federal agency as the incidental result of actions by that agency through which the agency has temporary ownership or custody of the land or facility, such as acquisition pursuant to a lien for delinquent taxes, the exercise of conservationship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

The Department has also incorporated in the definition of "Federal program" interpretive clarification that loan guarantees or loan insurance of the construction of buildings or other structures is covered by the phrase "undertaking, financing, or assisting construction or improvement projects" contained in the definition of "Federal program." This interpretation was previously provided in the preamble of the final rule that promulgated the current regulations. See 49 FR 27720, July 5, 1984. Further in this regard, the Department has clarified that the acquisition, management, and disposal of land or facilities that a federal agency obtains as the result of foreclosure or other actions taken under a loan, loan guarantee, or other financial assistance proved by the agency directly and specifically for that property or facility is likewise within the definition of "Federal program."

A federal agency may develop and use procedures to implement the FPPA for its loan, loan guarantee, or other financial assistance programs on either a specific project/loan basis or on the basis of an entire program. Further, if an agency has conducted a FPPA review of a loan or other financial assistance for the conversion of farmland and the agency or any other federal agency subsequently acquires the property related to that assistance, the previously conducted FPPA review will be sufficient to constitute compliance with the FPPA for the management an eventual disposal of the property.

More importantly, an agency may develop and use specific policies and procedures for the management and disposal of property acquired through foreclosure, forfeiture, or other such means that taken into consideration its primary statutory authorities regarding such properties. Clearly, these determinations can be best made by the particular agencies involved through their respective FPPA policies and procedures, in consideration of the statutory requirements under which they operate. The Department will consult with agencies, pursuant to section 1542 of the FPPA, 7 U.S.C. 4203, to address these concerns.

Some federal agencies would like to exempt certain sites related to the expansion of existing linear projects that would convert only a few acres of farmland but would avoid the conversion of a large number of acres. Some statewide LESA systems currently include exemptions of 10 acres per bridge and 3 acres per mile on existing highways. The construction of bridges and widening of existing highways is a farmland protection method. USDA will consult with Federal Highway Administration, on actions that are designed to improve existing linear projects so as to avoid the conversion of land that would occur if a new linear project were to be constructed.

This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulations 1512–1 and has been designated "non-major."

It has been determined that this action will not have an economic impact on the economy of $100 million or more; result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or result in significant adverse effects on competition; employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign, based enterprises in domestic or export markets.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

This document has been prepared in the Office of the Secretary, USDA, with the assistance of the Basin and Area Planning Division of the Soil Conservation Service.

List of Subjects in 7 CFR Part 658

Agriculture, Farmland, Soil conservation.

Accordingly, part 658 of title 7 of the Code of Federal Regulations is amended as follows:

PART 658—[AMENDED]

1. The authority citation for part 658 is revised to read:

Authority: 7 U.S.C. 4201–4209.

2. Section 658.2 is amended by revising paragraphs (a) and (c) to read as follows:

§ 658.2 Definitions.

(a) *Farmland* means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide of local importance. "Farmland" does not include land already in or committed to urban development or water storage. Farmland "already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as "urbanized area" (UA) on the Census Bureau Map, or as urban area mapped with a "tint overprint" on the USGS topographical maps, or as "urban-built-up" on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not "farmland" and, therefore, are not subject to the Act. Farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

* * * * *

(c) *Federal program* means those activities or responsibilities of a Federal agency that involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities.

(1) The term "Federal program" does not include:

(i) Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands; and

(ii) construction or improvement projects that were beyond the planning stage and were in either the active design or construction state on August 4, 1984.

(2) For the purposes of this section, a project is considered to be "beyond the planning stage and in either the active design or construction state on August 4, 1984" if, on or before that date, actual construction of the project had commenced or:

(i) acquisition of land or easements for the project had occurred or all required Federal agency planning documents and steps were completed and accepted, endorsed, or approved by the appropriate agency;

(ii) a final environmental impact statement was filed with the Environmental Protection Agency or an environmental assessment was completed and a finding of no significant impact was executed by the appropriate agency official; and

(iii) the engineering or architectural design had begun or such services had been secured by contract. The phrase "undertaking, financing, or assisting construction or improvement projects" includes providing loan guarantees or loan insurance for such projects and includes the acquisition, management and disposal of land or facilities that a Federal agency obtains as the result of foreclosure or other actions taken under a loan or other financial assistance provided by the agency directly and specifically for that property. For the purposes of this section, the phrase "acquiring, managing, or disposing of Federal lands and facilities" refers to lands and facilities that are acquired, managed, or used by a Federal agency specifically in support of a Federal activity or program, such as national parks, national forests, or military bases, and does not refer to lands and facilities that are acquired by a Federal agency as the incidental result of actions by the agency that give the agency temporary custody or ownership of the lands or facilities, such as acquisition pursuant to a lien for delinquent taxes, the exercise of conservatorship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

* * * * *

3. Section 658.3 is amended by revising paragraphs (c) and (d) to read as follows:

§ 658.3 Applicability and exemptions.

* * * * *

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or nonfederal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a nonfederal unit of government applies for federal assistance to convert farmland to a nonagricultural use, the federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the landowners want to proceed with conversion, the federal agency, on the basis of the analysis set forth in § 658.4 and any agency policies or procedures for implementing the Act, may provide or deny the requested assistance. Only assistance and actions that would convert farmland to nonagricultural uses are subject to this Act. Assistance and actions related to the purchase, maintenance, renovation, or replacement of existing structures and sites converted prior to the time of an application for assistance from a federal agency, including assistance and actions related to the construction of minor new ancillary structures (such as garages or sheds), are not subject to the Act.

(d) Section 1548 of the Act, as amended, 7 U.S.C. 4209, states that the Act shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a federal project, program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action. However, as further provided in section 1548, the governor of an affected state, where a state policy or program exists to protect farmland, may bring an action in the federal district court of the district where a federal program is proposed to enforce the requirements of section 1541 of the Act, 7 U.S.C. 4202, and regulations issued pursuant to that section.

4. Section 658.4 is amended by revising paragraphs (a) and (c)(2), and by adding two new paragraphs (g) and (h) to read as follows:

§ 658.4 Guidelines for use of criteria.

* * * * *

(a) An agency may determine whether or not a site is farmland as defined in § 658.2(a) or the agency may request that SCS make such a determination. If an agency elects not to make its own determination, it should make a request to SCS on Form AD–1006, the Farmland Conversion Impact Rating Form, available at SCS offices, for determination of whether the site is farmland subject to the Act. If neither the entire site nor any part of it are subject to the Act, then the Act will not apply and SCS will so notify the agency. If the site is determined by SCS to be subject to the Act, then SCS will measure the relative value of the site as farmland on a scale of 0 to 100 according to the information sources listed in § 658.5(a). SCS will respond to these requests within 10 working days of their receipt except that in cases where a site visit or land evaluation system design is needed, SCS will respond in 30 working days. In the event that SCS fails to complete its response within the required period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

* * * * *

(c) * * *

(2) Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated.

* * * * *

(g) To meet reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, after the agency has made a final decision on a project in which one or more of the alternative sites contain farmland subject to the FPPA, the agency is requested to return a copy of the Form AD–1006, which indicates the final decision of the agency, to the SCS field office.

(h) Once a Federal agency has performed an analysis under the FPPA for the conversion of a site, that agency's, or a second Federal agency's determination with regard to additional assistance or actions on the same site do not require additional redundant FPPA analysis.

5. Section 658.7 is amended by redesignating paragraph (b) as paragraph (c) and adding paragraphs (b) and (d) to read as follows:

§ 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

* * * * *

(b) Section 1542(b) of the Act, 7 U.S.C. 4203, requires, as appropriate, each department, agency, independent commission, or other unit of the Federal Government, with the assistance of the Department of Agriculture, to develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of the Act.

* * * * *

(d) To meet the reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, each Federal agency is requested to report to the Chief of the Soil Conservation Service by November 15th of each year on progress made during the prior fiscal year to implement sections 1542 (a) and (b) of the Act, 7 U.S.C. 4203 (a) and (b). Until an agency fully implements those sections, the agency should continue to make the annual report, but may omit the report upon full implementation. However, an agency is requested to file an annual report for any future year in which the agency has substantially changed its process for compliance with the Act.

Dated: June 8, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–14548 Filed 6–16–94; 8:45 am]

BILLING CODE 3410–16–M

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV94–916–2–IFR]

Nectarines and Peaches Grown in California; Revision of Container Pack Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the pack requirements for volume-filled containers of nectarines and peaches grown in California shipped to the fresh market. This rule is designed to provide handlers with more flexibility in packing fresh nectarines and peaches consistent with established packing practices, and is needed to help the California nectarine and peach industries maintain the quality of fruit shipped to the fresh market. This rule is in the interest of producers, handlers, and consumers of these fruits.

DATES: Effective on June 17, 1994. Comments which are received by July 18, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; or by facsimile at 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the orders. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee (NAC) recommended that the pack requirements for volume-filled containers of California nectarines be revised, and the Peach Commodity Committee (PCC) recommended that the pack requirements for volume-filled containers of California peaches be revised. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. These committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Section 916.350 (7 CFR 916.350, as amended at 59 FR 15838) specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(1) of § 916.350 specifies that nectarines in any closed package or container, except master containers of consumer packages and individual consumer packages, shall be packed in accordance with "standard pack". "Standard pack" is defined in paragraph (b) of § 916.350 as having the same meaning as set forth in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160). Under the definition of "standard pack", nectarines packed in certain containers must be tightly packed and the containers must be "well filled". "Well filled" means that the container is properly filled, allowing no movement of its contents, and the container should have its contents in firm contact with the cover. This rule revises § 916.350 by adding a new proviso to paragraph (a)(1) specifying that the nectarines in any such container need only be filled to within one inch of the top of the container. This rule also removes the proviso in paragraph (a)(1) of § 916.350 reading "That nectarines in any container shall be fairly uniform in size", because such requirements are included within the definition of "standard pack" in the United States Standards for Grades of Nectarines, and therefore are not needed in this paragraph.

Section 917.442 (7 CFR 917.442, as amended at 59 FR 15840) specifies container and pack requirements for fresh peach shipments. Paragraph (a)(1) of § 917.442 specifies that peaches in any closed package or container, except master containers of consumer packages and individual consumer packages, shall be packed in certain containers in accordance with "standard pack". "Standard pack" is defined in paragraph (b) of § 917.442 as having the same meaning as set forth in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223). Under the definition of "standard pack", peaches in certain containers must be tightly packed and the containers must be "well filled". "Well filled" means that the level of the fruit must be slightly higher than the top edge of the container and the peaches are held firmly in place. This rule revises § 917.442 by adding a new proviso to paragraph (a)(1) specifying that the peaches in any such container need only be filled to within one inch of the top of the container.

The NAC and PCC recommended these revised pack requirements for fresh nectarines and peaches in volume-filled containers after a comprehensive review of changes in the nectarine and peach industry packing practices over the years, and the need to make appropriate changes in the pack requirements. When the pack requirements were established, most containers were of a place-pack or a tray-pack type, but at the present time substantial quantities of nectarines and peaches are shipped in volume-filled containers throughout the entire range of sizes packed. This revision will provide handlers with more flexibility in selecting the appropriate size container for certain volume-filled packs without potential bruise damage to the fruit. Under current packing conditions, nectarines and peaches of certain varieties and sizes are sometimes bruised when packed in accordance with "standard pack", because the fruit extends above the top of the container and is damaged when the lid is attached. There are a combination of factors contributing to this situation, including: (1) Handlers must pack a specific quantity of fruit, in terms of minimum weight, in certain containers, and some handlers prefer to pack precisely this quantity in each such container; (2) the volume of fruit packed in a particular container varies depending on the variety and size of fruit for a given pack weight; (3) handlers maintain a limited number of different size containers in inventory; and (4) handlers pack most of their fruit at the well matured stage of maturity, and such fruit is susceptible to bruising when packed too tight. This revision will enable handlers to pack their nectarines and peaches with up to one inch space between the top of the fruit and the top of the container, and result in less bruising of the fruit due to excessively tight packs.

This rule reflects the committees' and the Department's appraisal of the need to revise the pack requirements for California nectarines and peaches in volume-filled containers, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule revises pack requirements for fresh California nectarines and peaches in volume-filled containers, enabling handlers to pack such fruit consistent with desirable packing practices, and is needed to help the California nectarine and peach industries maintain the quality of fruit shipped to the fresh market. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Shipment of the 1994 season crop of fresh California nectarines and peaches is currently underway; (2) this rule relaxes pack requirements for both nectarines and peaches; (3) California nectarine and peach handlers are aware of these revised pack requirements recommended by the committees at public meetings, and they will need no additional time to comply with such requirements; and (4) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 916.350 is amended by revising paragraph (a)(1) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(1) Such nectarines when packed in any closed package or container, except master containers of consumer packages and individual consumer packages, shall conform to the requirements of standard pack: *Provided*, That nectarines in any such volume-filled container need only be filled to within one inch of the top of the container.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 917.442 is amended by revising paragraph (a)(1) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(1) Such peaches when packed in any closed package or container, except master containers of consumer packages and individual consumer packages, shall conform to the requirements of standard pack: *Provided*, That peaches in any such volume-filled container need only be filled to within one inch of the top of the container.

* * * * *

Dated: June 9, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–14742 Filed 6–16–94; 8:45 am]

BILLING CODE 3410–02–P

Rural Electrification Administration

7 CFR Parts 1753 and 1755

RIN 0572–AA20

REA Form 525, Central Office Equipment Contract (Including Installation)

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction to add a Central Office Equipment Contract (Including Installation) and to announce a general revision of REA Form 525, Central Office Equipment Contract (Including Installation). REA is updating this contract in order to incorporate technological changes.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2836, South Building, USDA, Washington, DC 20250–1500, telephone number (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

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

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule: (1) Will not preempt any state or local laws, regulations, or policies; (2) Will not have any retroactive effect; or (3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes to the Central Office Equipment Contract in this final rule are updates which have been made so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning these requirements should be directed to the Department of Agriculture, Clearance Office, Officer of Information Resources Management, room 404–W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503. When OMB has approved the information and recordkeeping requirement contained in this final rule, REA will publish an amendment to this final rule to add the OMB control number and statement to the regulatory text.

National Environmental Policy Act Certification

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

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 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.

Background

The proposed rule for 7 CFR 1755.525 was first published in the **Federal Register** as a 7 CFR part 1762 proposed rule on October 29, 1989, at 54 FR 43429. Since that time part 1762 has been incorporated into part 1755. Due to the pertinence of the comments received REA decided to incorporate many of them into the document. The revised rule was published as a 7 CFR part 1755 proposed rule on March 14, 1991, at 56 FR 10827 with a 60 day comment period. During this period comments and suggestions were received from six major manufacturers of central office equipment. Many useful comments and suggestions were received and many of them have been incorporated into the revised Form 525 Contract.

The last revision to the Form 525 Contract was September 1966. Since that date, significant changes have been made in the telephone industry. The profound advancement in central office equipment technology has made possible many new services on a cost effective basis. Divestiture and competition, legislation and regulation have brought about many changes in the conduct of telecommunications business. The revised Form 525 Contract incorporates these changes into the Central Office Equipment Contract. The main changes to the Contract are new requirements that: (1) Provide for a software license, (2) provide for patent, copyright, and trademark infringement protection, (3) provide a cap on consequential damages, and (4) provide Equal Employment Opportunity requirements. In addition, it revises and updates provisions for (1) delivery and installation of equipment, (2) inspection and testing of the completed installations, (3) payments to the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

REA has issued a series of 7 CFR chapter XVII parts which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments which provide for and secure REA financing. The technical change to 7 CFR part 1753 updates the number of days allowed for acceptance testing in order to conform with REA Form 525 Central Office Equipment Contract (Including Installation). The revision to 7 CFR part 1755 codifies REA Form 525, Central Office Equipment Contract (Including Installation). The 7 CFR part 1755 also describes where copies of the contract may be obtained. REA telephone borrowers are required to use the REA Form 525 Contract where major central office facilities are being procured and installed under contract. The present REA Form 525 has become outdated due to technological advancements and other reasons. Advanced technology and equipment concepts have introduced new issues. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues addressed in updating this contract are: Expansion of patent infringement protection to include copyrights, trademarks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; bonding and insurance; independent contractor provisions; and support of discontinued products. All these additions and changes have been made so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Comments

Public comments were received from Alcatel Network Systems, Inc., AT&T Network Systems, Mitel Public Switching, Northern Telecom Inc., Redcom Laboratories, Inc., and Seimens Stromberg-Carlson. The comments, recommendations and responses are summarized as follows:

General Comments

One commenter remarked that a telephone central office switch is a computer and should be purchased using a supply type contract rather than a construction contract and therefore, REA Form 525 should not apply.

Response: REA feels that due to the very complex nature and individuality of each central office and the immense amount of coordination and development that must be done prior to, during, and after the installation a supply type contract would not be a suitable instrument to achieve the desired results. Further, REA feels a supply type contract does not provide the Borrower the same degree of protection as the REA Form 525 Contract. This lack of protection could be devastating to the Borrower and consequently, jeopardize REA loan security. The required use of REA Form 525, Central Office Equipment Contract (Including Installation), remains.

Notice and Instructions to Bidders

Item 4: One commenter remarked that the Owner should be responsible for providing a notice that the state requires a license for bidding, if such a requirement exists.

Response: Since the Bidder is the party who ultimately will have to abide by the State's licensing requirements, REA believes the Bidder should bear the responsibility for determining whether a license is required for bidding.

Item 6: One commenter remarked that the method of bidding in the existing REA Form 525 makes bid bonds optional and the proposed REA Form 525 removes this option. They feel that the option should remain.

Response: The existing REA Form 525, Notice and Instructions to Bidders, Item 5, and the proposed REA Form 525, Notice and Instructions to Bidders, Item 6, specifically state that each proposal must be accompanied by a Bid Bond or a certified check. No other option exists. The wording in both documents is essentially the same.

Item 14: (b) One commenter remarked that this requirement adds complexity and administrative burden because the manufacturers are already required to comply with REA Form 525, Article VI.

Response: Item 14(b) is required by the Office of Federal Contract Compliance Programs (OFCCP) requirement.

Bidder's Proposal To Engineer, Furnish, Deliver, and Install Equipment, Materials and Software

Article I, Bid Price

Section 1: Two commenters questioned the use of the term "Delivery Acceptance" in column five of this section.

Response: Column five is the time in calendar days between approval of the Contract and delivery of equipment. The term "Acceptance" has been removed from this column to more clearly define the requirement.

Section 1: One commenter remarked that there should be some instruction as to how to identify each project.

Response: REA agrees. REA has added Note 3 to Article I, section 1, as an instruction to leave a blank line between each Project listed in section 1.

Section 3: One commenter remarked that the word "substantial" should be replaced and one commenter remarked that the language "The Owner * * * may * * * make reasonable changes, additions to or subtractions from the Specifications * * *" is ambiguous and should be changed.

Response: This is the same language that is in the existing REA Form 525 Contract. It has worked well in the past and REA does not feel there is a need to change it.

Article II, Delivery and Installation

Section 1: One commenter remarked that the draft REA Form 525 made the Completion of Installation of the essence. The commenter feels that Completion of the Project should be of the essence, since liquidated damages are measured from that event.

Response: Completion of Installation is a scheduled date that must be met. The scheduled date for the Completion of the Project, as shown in Article I, Section 1, Column 7, is established by adding 60 days to the Completion of Installation. Liquidated Damages are measured from the scheduled date for Completion of the Project. Actual Completion of the Project may be a date earlier or later than the scheduled date of Completion of the Project as defined in Article VII, Section 1, Definitions. Therefore, REA believes that Completion of Installation must be of the essence.

Section 1: One commenter remarked that if a remote switching terminal is scheduled independently of a central office, the Contract should reflect this as a separate Project.

Response: Article I, Section 1, and the Contract in general, regard a central office, including all associated remote switching terminals, to be an indivisible unit for delivery, payment, turnover, closeout, liquidated damages, and other purposes. A host office and its remotes are interdependent and alterations to one may affect the others. Therefore, REA regards a host office and all associated remotes as one item under the Contract.

Section 1: One commenter remarked that the reference to "the satisfaction of the Owner and the Administrator" is a subjective standard and should be removed.

Response: If the language in question is deleted, the Section would require unconditional adherence to the terms of the Contract. The language is included here to allow the possibility of latitude, where the Owner and REA agree.

Section 3: One commenter had the following remarks:

(i) In the first sentence the wording "give sufficient supervision to" should be changed to "supervise."

(ii) Also, this commenter feels the language "using Bidder's best skill and attention" is onus and unenforceable and should be deleted.

(iii) The commenter also feels the second sentence should be expanded to include the following language "but that the failure of the Bidder to discover these items shall not create any obligation or liability on the part of the Bidder, nor relieve the Owner of its performance or responsibilities."

Response: REA feels that the existing language is appropriate. REA disagrees with the expansion of the second sentence since REA believes it is reasonable for the Bidder to be responsible for the fulfillment of the Contract requirements.

Section 4: One commenter had the following remarks:

(i) The reference to "manufacturing" in the first paragraph should be replaced with "other than cost information or any other information from which cost could be derived."

(ii) The commenter also suggests the language "each central office (and its associated remote switching terminals), feature or service" be replaced with the word "Project" as a potential exists for a remote to be scheduled as a separate Project.

(iii) In addition, the commenter feels the word "nonperformance" in the fourth paragraph should be replaced with "failure to satisfactorily resolve all such deficiencies as previously listed on the REA Form 517."

Response:

(i) REA feels the language in the first paragraph offers sufficient protection to the Bidder as written. This language has not been changed.

(ii) As previously responded to, Article I, Section 1, and the Contract in general, regard a central office, including all associated remote switching terminals, to be an indivisible unit. However, in the interest of brevity, this language has been replaced with the word "Project."

(iii) REA agrees and has revised Article II, section 4, paragraph 4 to include the suggested language.

Section 4: One commenter remarked that the fourth paragraph of this Section imposes an artificial thirty (30) day requirement for correction of deficiencies. They suggest the Section be amended to require corrections within thirty (30) days of receipt of the REA Form 517 from the Borrower or by the scheduled date for Completion of the Project, whichever is longer.

Response: REA feels this Section offers the Bidder and the Borrower equal protection by imposing specific time limits for the Borrower's tests and the Bidder's corrections. This language has not been changed.

Section 7: One commenter remarked that the first paragraph of this Section should be modified to permit the Bidder either to correct the defect within 30 days or to agree with the Borrower during such 30 days on a course of correction reasonably designed to cure the defect.

Response: REA agrees. This Section has been revised to allow an extension of time if agreed upon by the Owner and REA.

Section 7: One commenter remarked that refund and credit options should be included in the event a defect cannot reasonably be corrected.

Response: Such a provision would give the Bidder the right to simply "buy back" equipment or software when a problem is encountered. To the Borrower, this means that essential features or capability could be lost and would remain unavailable for the entire useful life of new switching equipment. The resulting reduction in value of the Contract to the borrower cannot be predicted. This option has not been added to Form 525.

Section 7: One commenter remarked that minor "bugs" are inherent in all software and should not rise to the level of warranty defects.

Another commenter remarked that the Form 522 Specifications and not other technical material provided by the Bidder should be the standard for software warranty.

Response: REA feels the performance of the software must be in accordance with the Form 522 Specifications and Bidder documentation.

The Bidder documentation is furnished to assist the borrower in the operation, administration and maintenance of the switch.

Section 7: Three commenters remarked that this Section should be rewritten to add disclaimers and exclusive remedies and to limit the Bidder's liabilities and limit the Owner's remedies.

Response: REA believes that the language as stated divides the risks equitably.

Section 7(a): One commenter remarked that the reference to "a central office and its associated remote switching terminals" be deleted and replaced with the words "each Project."

Response: As previously responded to, this language has been replaced with the word "Project."

Section 7(b): Three commenters remarked that the warranty period for software should be shortened.

Response: REA requires a five (5) year warranty period because software is information based and defects in seldom used programs would not be detected until the program is used. REA believes that over a 5 year period even seldom used programs would be used and any defects corrected.

Section 7(e): One commenter remarked that exceptions to the warranty in the subsection should also include fire, explosions, power failures, force majeure, and equipment which is normally consumed in operation, such as fuses.

Response: The warranty must cover losses of whatever nature, resulting from causes covered by the warranty provided for in the formal Contract.

Section 7(f): One commenter requested that the period after the word "Owner" in the last line in the subsection be deleted and the words "during the warranty period, thereafter, all such costs and risk of shipping shall be borne by the Owner." be added.

Response: The first paragraph of the Section specifically defines these conditions as applying "Throughout the warranty period * * *." REA does not feel additional language is required to further define this.

Article III, Payments and Releases of Lien

Section 1(a),(b): One commenter remarked that these subsections are unfair as written. Each central office and its associated remotes should be treated separately for payment purposes to allow the Bidder to get paid for his investment in a timely manner.

Response: Article I, Section 1, and the Contract in general, regard a central office, including all associated remote switching terminals, to be an indivisible unit for delivery, payment, turnover, closeout, liquidated damages, and other purposes. A host office and its remotes are interdependent and alterations to one may affect the others. Therefore, REA regards a host office and all associated remotes as one item under the Contract.

Section 1(c): One commenter remarked that the phrase "Completion of the Contract" in this subsection should be changed to read "Completion of the Project." This would enable the Bidder to receive the final ten percent (10%) for each Project as it is satisfactorily completed.

Response: These have been the standard REA Contract terms for many years. REA feels it offers sufficient protection to the Borrower that the Contract will be completed in a satisfactory manner, while allowing the Bidder a return on its investment prior to satisfactory completion of the Contract. Also, the Bidder can receive the final ten percent (10%) of a Project if the partial closeout procedure is allowed.

Section 1(a), (b), (c): One commenter remarked that unproven features and capabilities should not delay payments for the Project.

Response: Unproven features and capabilities are listed as separate Projects in Article I, section 1, with separate time frames for delivery and installation of features and capabilities that cannot be provided at the time of Completion of the Project. If separate schedules are not part of the Contract, delays in delivery would cause delays in payments for the entire Project. This encourages a Bidder's disclosures as required in Article V, section 2.

Section 1(e): One commenter remarked that the subsection should be reworded to require the Owner to pay the Bidder for each central office if the subsection is not struck out.

Response: REA agrees with this comment. The language in Section 1(e) has been changed to require the Owner to strike out this section if the partial closeout procedure is not to be allowed.

Section 2: One commenter remarked that this section references a "Waiver and Release of Liens," a "Certificate of Contractor" and a "Certificate of Contractor and Indemnity Agreement" but these documents were not made public at the time, consequently, they reserve their right to comment after they are issued.

Response: The documents referred to by the commenter are existing and have not been revised. If any changes are made to the aforementioned documents they will be published as a Proposed Rule and comments will be requested at that time.

Article IV, Particular Undertakings of the Bidder

Section 1(b): Two commenters remarked that this Section is unfair to the Bidder. They feel that the Bidder should only be responsible for damages caused by the Bidder and that the Borrower is in a much better position to protect its site, and guard against fire, flood and theft.

Response: The Bidder is required by law to have insurance from commencement to completion of the Contract. The Bidder also has charge and control of all work, equipment, materials and software to be done or used therein. Therefore, REA feels the Bidder is in a better position during this time period to protect itself against risk of loss.

Section 3: One commenter remarked that commercial insurance is unnecessary. Specifically, the coverage limits required are within the "deductible" for large companies. Thus the risk is self retained.

Response: Insurance requirements for contractors are set forth in 7 CFR part 1788, subpart C, Insurance for Contractors, Engineers and Architects. Generally, this regulation is intended to set minimum coverage requirements for companies of all sizes.

Section 5: One commenter remarked that the 525 Contract should be modified to include a Uniform Software Agreement.

Response: REA agrees. A Uniform Software License was drafted and published for comments on May 20, 1993, at 58 FR 29363, and was published as a final rule on April 14, 1994, at 59 FR 17675. The final rule will be an addendum to any 525 or 545 Contract that requires a license.

Section 6: One commenter remarked that some guarantees may not be transferable or assignable by the Bidder and this Section should be subject to any applicable restrictions on transfer or assignment.

Response: Article IV, section 6 has been revised to allow for restrictions on transfer of warranties. However, regardless of restrictions upon transfer or assignment, the warranty coverage defined in Article II, section 7, is required.

Section 7: Two commenters remarked that a buy back option should be allowed for infringement of intellectual property rights.

Response: Such a provision would give the Bidder the right simply to "buy back" equipment or software when a copyright problem is encountered. To the Owner, this means that essential features or capability could be lost and would remain unavailable for the entire useful life of the new switching equipment. The resulting reduction in value of the Contract to the Owner cannot be predicted, and often would be greater than the amount the Owner paid for the price of the infringing equipment or software.

Section 7: One commenter remarked that this Section should be limited to United States patents, trademarks, copyrights and trade secrets.

Response: REA believes this would not provide sufficient protection.

Section 7: One commenter remarked that the Bidder should be allowed to take pro-active steps to avoid an injunction, rather than always having to react to an injunction after it is imposed.

Response: This section merely states the action the Bidder must take to protect the Owner after the use of the equipment or software is enjoined. It does not proscribe any action the Bidder may wish to take to protect its own interests and the Owner's interests before the injunction is granted.

Article V, Remedies

Section 2: Three commenters remarked that the cap on liquidated damages is excessive and unrelated to any actual damage.

Response: REA believes that if a limit is to be set it should not be less than the price of the affected central office and all associated remote switching units. This in many cases will be less than the total Contract price. This Section also instructs the Owner to notify the Bidder in writing how the liquidated damages were computed.

Section 2: One commenter remarked that previous draft versions of the 525 Central Office Equipment Contract better defined "placed in service" and assumes liquidated damages are applied based on that date.

Response: REA believes that the wording "used by the Owner to earn revenue" more clearly defines "placed in service." Article V, sections 2 and 5, and Article VII, section 1, Definitions, clearly state that liquidated damages can only be assessed and are the exclusive remedy when the Bidder has failed to complete the Project on time and are not based on when a central office is placed in service.

Section 2: One commenter remarked that the Bidder should not be assessed liquidated damages based on the entire Project when a only a portion is delayed.

Response: As stated previously, the central office and all associated remote switching terminals are a unit for the purposes of this Contract. Liquidated damages are measured from "Completion of Project." This gives the Bidder an incentive to complete the Project in a timely manner. If liquidated damages were assessed on each individual part of a Project, then in some cases the incentive to finish the Project on time would be removed.

Section 2: One commenter remarked that liquidated damages should not apply to features or capabilities that are not fully developed or do not have a verifiable satisfactory field performance because they have been accepted by the Owner and by definition they are unproven. It was also felt that even if they are not exempt, liquidated damages should not apply if the central office has been placed in service.

Response: The Owner allowed these unproven features to be bid based on a time period established by the Bidder for the availability of these features. A Bidder's responsibility to provide the features or capabilities bid on, in the time period established by the Bidder, cannot be diminished by notifying the Owner that they are not going to be available in the time promised. The language in Article V, section 2, remains.

Liquidated damages on unproven features are a measure of revenue that would be lost by that feature not being available on time. It does not have a bearing on, and should not be associated with, revenue from the rest of the Project that is in service. If it was as suggested in the comment, then it would be a penalty to the Owner in lost revenue for the Bidder not completing the feature or capability as scheduled.

Section 2: One commenter remarked that additional language be added after the word "Provided," to clarify this provision. It was also felt that the last line of this section seemed inappropriate and should be deleted.

Response: REA feels the existing language clearly identifies the intent of this provision. Also, a Bidder's responsibility to complete the Project as originally bid should not be diminished because of neglect by the Bidder to notify the Owner of unproven or unavailable features or capabilities. The last sentence remains.

Section 3: Four commenters remarked on this section. From the comments received, it appears this section is still of great concern to the equipment manufacturers. The comments and recommendations received are summarized below:

(i) Two commenters remarked that ten times the Contract price is excessive. Three commenters remarked that they should be able to disclaim consequential damages. Two commenters remarked that that much exposure is probably not insurable but if it was, the premiums would be excessive and would be passed on to the Owner. One commenter recommended that consequential damages be the lesser of five times the purchase price of the affected central office and its associated remote terminals, or $5.0 million.

(ii) One commenter recommended that the Owner retain the liability since the Owner is in a better position to prevent losses by properly maintaining its network. One commenter felt that consequential damages should only be available during the warranty period.

Response:

(i) The existing Form 525 does not limit the liability for incidental or consequential damages. REA's intent is to place a limit of liability on consequential and incidental damages, except for personal injury or tangible property damage, which will: enable Bidders to insure for a risk of known limit; provide Owners with protection against losses related to product failure; protect the government's loan security; and serve as a standard that Bidders and Owners alike can expect to see on every Contract so competitive bidding can be facilitated. REA has established a liability limit of ten times the total Contract amount, which will result in a limit in the range of $2.5 million to $10 million for typical REA Contracts.

(ii) Consequential damages provide a measure of protection from loss due to product failure or other causes related to the Bidder's performance. Since the risk of loss still exists after the warranty period, consequential damages must also be available.

Section 5: One commenter remarked that in order to make the proposed draft consistent with the suggested addition of exclusive remedies language in other sections, some minor language adjustments are needed for this section.

Response: REA has not added exclusive remedy language so no language adjustments were made.

Section 5: One commenter remarked that cumulative remedies should not apply for a normal warranty claim. The warranty provisions of the Contract provide for a remedy and course of conduct in the event of a product failure.

Response: The warranty provisions may not fully protect the Borrower in some situations. For example, a defective component, serviced under Article II, section 6, could cause a consequential damages claim. The language in section 5 is unchanged.

Article VI, Equal Employment

One commenter remarked that a number of large national employers have made direct arrangements with the Office of Federal Contract Compliance Programs (OFCCP) relating to the procedures to be followed in connection with EEO policies and language should be added to this Article VI to cover separately negotiated arrangements.

Response: The language in Article VI, was provided by the Office of Federal Contract Compliance Programs (OFCCP) and cannot be changed by REA.

Article VII, Miscellaneous

Section 1: One commenter felt the definition of Software should be expanded to clarify that Software means the Software provided to the Owner by the Bidder hereunder and the words "and similar design level documentation" should be inserted after the words "source code" in this subsection. It was also felt that the definition of Project should be expanded to include remote switching terminal(s).

Response: REA feels the definition of the term "Software" is appropriate as written and will not be construed to mean any software other than the software furnished for the Contract in question. The words "and similar design level documentation" have not been added to the words "source code." Source code is a definable commodity but "and similar * * *." is overly vague. REA also feels the definition of the word "Project" is sufficient. If a remote is to be a separate Project, it must be listed as such in Article 1, section 1.

Section 1: One commenter is concerned that the Owner's failure to provide site availability and needed facilities for remotes can unduly hold up Completion of the Project. The commenter proposed adding language to cover that event.

Response: REA feels the definition of "Completion of the Project" is appropriate. The concerns of "Site availability or functionality" not being available in a timely manner is covered under Article II, section 1, Time of Completion of Installation.

Section 2: Two commenters remarked on this section. Their comments are summarized below:

(i) One commenter remarked that this Section still requires that equipment and software support be provided for five or eight years from discontinuing the manufacture of that Equipment. The commenter feels this time period should commence upon Completion of the Contract. It is felt this provision as drafted would penalize Bidders which enhance and manufacture existing equipment and reward Bidders who discontinue manufacture of equipment and develop new and incompatible equipment.

(ii) One commenter wanted to revise the language to change the intent of this paragraph and also add a provision for a one (1) year software warranty.

Response: REA previously responded in the **Federal Register** on March 14, 1991, at 56 FR 10827, that it concludes, based on previous comments, that this new Section strikes a reasonable balance for sellers and buyers.

Section 3: One commenter remarked that its only area of concern arises in a two fold fashion. To begin with, the use of the word "and" following the word "substantially" in the first sentence interferes with the intended meaning of the sentence, and as such, should be deleted. The specific concern arises from the wording of this section 3, Notwithstanding the possibility of authorization by the Administrator, it suggests that such authorization is permissive, not mandatory and that therefore the intent of REA Bulletin 344–3 is not met. The commenter submits that such authorization be mandatory in the event the valuation conditions of the Bulletin are met.

Response: The word "and" following "substantially" in the first sentence is a typographical error and has been changed to "all." In regard to the Administrator's authorization being permissive, the Administrator's authorization is not required when the conditions of Bulletin 344–3 are met. It is only required when the conditions of Bulletin 344–3, paragraph IV.B. or IV.C. are not met.

Section 6: One commenter remarked that the proposed draft has added a new sentence to this section which releases the borrower from its obligation to maintain the confidentiality of the Bidder's proprietary information if the Bidder fails to fulfill its continuing support obligations. The commenter believes the proposed remedy for such a problem is overly broad and is punitive to the Bidder.

Response: REA feels this section offers sufficient protection for the Bidder and the Owner. The only way the Owner can be released from the confidentiality requirement is by the Bidder's failure to meet the obligations of the Form 525 Contract. Article VI, section 6, as proposed, provides some incentive not to violate the obligations of the Contract.

Section 12: One commenter suggested that the Bidder not be required to obtain the consent of its surety for all subcontractors. It is felt that if the surety makes such a requirement on the Bidder, this language adds nothing to the Bidder's obligation to obtain proper protection. On the other hand, if such a condition is not required by the surety, there should be no need to retain this condition.

Response: The only way the REA and the Owner can be assured that the surety allows subcontractors is by written consent. The language in this section remains unchanged.

• *Section 12:* One commenter remarked that either party should be permitted to subcontract the Agreement to an affiliate without the consent of the other party. A corporate restructuring of a Bidder should not be able to be arbitrarily held up by a single Owner.

Response: REA does not feel that a Bidder should be allowed to arbitrarily subcontract an REA Contract without the proper consent, which will not be unreasonably withheld. This language has worked well in the past and REA feels it will continue to work well in the future.

List of Subjects

7 CFR Part 1753

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

7 CFR Part 1755

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

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

PART 1753—TELECOMMUNICATIONS 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.*, 1921 *et seq.*

2. In § 1753.39, paragraph (f)(1)(i) is revised to read as follows:

§ 1753.39 Closeout documents.

* * * * *

(f) * * *

(1) * * *

(i) Immediately following completion of the last central office equipment installation, arrange with the contractor's installer, connecting company (where necessary), and the GFR for performance of the acceptance tests of offices not previously tested. The date for testing should be established so that the installer will not be required to return to the site for the sole purpose of assisting in these tests. Acceptance tests shall be performed within 30 days of completion of the installation, unless otherwise requested in writing by the contractor and approved in writing by the borrower.

* * * * *

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

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

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

2. Section 1755.93 is amended by revising the entry for Form 525 in the table and footnote 1 at the end of the table to read as follows:

§ 1755.93 List of standard forms of telecommunications contracts.

* * * * *

REA form No.	Issue date	Title	Purpose	Source of copies
*	*	*	*	*
525	July 18, 1994	Central Office Equipment Contract (Including Installation).	Purchase and installation of central office switching equipment.	REA.[1]
*	*	*	*	*

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent the Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA Publication Office is (202) 720–8674.

* * * * *

3. Section 1755.525 is added to read as follows:

§ 1755.525 Form 525, central office equipment contract (including installation.)

The REA Form 525, Central Office Equipment Contract (Including Installation), in this section shall be used for all purchases of central office equipment (other than such purchases of special equipment using Form 397) using REA financial assistance when the equipment is supplied and installed by the seller or installed by a firm under contract with the seller as defined in 7 CFR part 1753, subparts E and H. The REA Form 525 Central Office Equipment Contract follows:

Central Office Equipment Contract (Including Installation)

Notice and Instructions to Bidders; Central Office Equipment Project (Including Installation)

1. Sealed Proposals for the engineering, furnishing, delivery, and installation of central office equipment, materials and software for the

____

____

(hereinafter called the "Owner") which is to be part of the system known as

____

____

to be financed pursuant to a loan contract between the Owner and the United States of America (hereinafter called the "Government") by the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") will be received by the Owner on or before ________ o'clock, ______.M.,

____

at __________________________

____

at which time and place the Proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

2. The Bid Documents (composed of plans, specifications and drawings), together with all necessary forms and other documents for Bidders, may be obtained from the Owner or from the Engineer, at the latter's office at

____

____

The Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract between the Owner and the Government may be examined at the office of the Owner.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number of each set with the name of the Bidder will be recorded by the Engineer. Bids will be accepted only from original Bidders, or from some other qualified Bidder to whom such a set has been transferred by the original Bidder with the approval of the Engineer prior to the pre-bid technical session.

3. A pre-bid technical session will be held with each Bidder during the week of ________, 19____ at

____

for the purpose of receiving the Bidder's Technical Proposal, discussing details of the Project(s), and considering suggestions from Bidders. The Owner shall attach to this Notice a list of the information required in the Bidder's Technical Proposal. Each Bidder will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the Bidder shall fully describe to the Owner any exceptions to the Specifications the Bidder may request. In addition, the Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner decides to incorporate any changes into the Specifications, the Owner shall furnish all prospective Bidders a copy of the Specifications containing such revisions (the "Revised Specifications") and all Bids shall be made on the basis of the Revised Specifications. At this session, the Bidder shall identify all documentation and materials that it claims constitute agreed excluded documentation under section (2)(xi) of the Software License. The Bidder shall claim as agreed excluded documentation only those items it may be unable to provide to the Borrower as required by said section (2)(xi). The Engineer shall immediately provide a list of all items so identified to [appropriate REA office]. The Engineer shall inform the Bidder at least ______ days before the scheduled bid opening whether either the Engineer or [REA] will reject the Bid because of items so identified. Licensor agrees that certain Licensed Software cannot be excluded from the requirements of said section (2)(xi), including but not limited to software that would significantly impair the operation of the System, would significantly impair the ability of the Owner to generate revenue, or would pose a risk to REA loan security. If allowed, the agreed excluded documentation shall be individually identified in an attachment to the Bid. No bid shall be accepted from a Bidder who fails to attend the pre-bid technical session or fails to demonstrate to the Owner that its equipment meets the requirements of the Plans and Specifications.

4. Proposals shall be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number, if a license is required for bidding on a project by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Specifications, forms of Bidder's Proposal and Acceptance, and Contractor's Bond attached hereto, and shall become informed as to the location and characteristics of the proposed central office and remote terminal installations, features and services, the transportation facilities, the kind of facilities required before and during the delivery and installation of the equipment and materials, the general local conditions and all other matters that may affect the cost and the time of completion of the installations. Bidders will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the "Anti Kick-Back Acts," as amended, (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001, as amended.

6. Each Proposal must be accompanied by a Bid Bond, in the form attached, or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum possible bid price. The maximum possible bid price is the sum of the total base bid, spare parts, maintenance tools and all positive amounts for alternates. Each Bidder agrees that, if its Proposal is one of the three low Proposals, its Bid Bond or check shall be held by the Owner until a Proposal is accepted and Contractor's Bond, when required, is furnished by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed ninety (90) days from the date hereinbefore set for the opening of Proposals whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned to the Bidder within a period of thirty (30) days.

7. The successful Bidder will be required to furnish to the Owner a Contractor's Bond in conformance with the requirements of 7 CFR part 1788, subpart C, Insurance for Contractors, Engineers, and Architects.

8. Should the successful Bidder fail or refuse to furnish a Contractor's Bond within thirty (30) days after written notification of the award of the Contract by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project(s). The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the Contract or to furnish a Contractor's Bond.

9. If requested by the Owner or the Administrator, the Bidder shall furnish evidence, satisfactory to the Owner and the Administrator, that the Bidder has the necessary facilities, ability, and financial resources to perform the Contract.

10. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

11. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the execution of any Contract which may be awarded thereon. Failure to provide a Bid Bond or check as specified in item six (6) above is not a minor irregularity.

12. The Owner reserves the right to reject any or all Proposals.

13. The equipment to be furnished for all central offices and remote switching terminals included in the Proposal is to be of one and the same basic design. A Proposal submitted on any other basis will not be considered.

14. Equal Opportunity and Employment

(a) The Offeror's or Bidders's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in trade
	(Insert goals for each year)	(Insert goals for each year)

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with Executive Order 11246 (3 CFR, 1963–1965 Comp., p. 340) and the regulations in 41 CFR part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. Transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246 and the regulations in 41 CFR part 60–4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(d) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is

____

____

(insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

Note: Paragraph 14 is applicable to the extent required by law. If applicable, certain information needs to be inserted at subparagraphs (b) and (d). In determining whether and how this paragraph is applicable, reference should be made to Office of Federal Contract Compliance Programs regulations (41 CFR Chapter 60).

____

Date

____

Owner

By ______________________________

Title ______________________________

Bidder's Proposal to Engineer, Furnish, Deliver, and Install Equipment, Materials and Software

(Proposal shall be submitted in ink or typewritten)

To: ______________________________

(Hereinafter called the "Owner")

The undersigned (hereinafter called the "Bidder") hereby proposes to engineer, furnish, deliver, and install the equipment, materials and software for each Project listed under Column 1, "Project," in Article I, section 1, and described in the plans, specifications and drawings (hereinafter called the "Specifications") prepared by the Owner and attached hereto and made a part hereof, financed by a loan to the Owner made or guaranteed by the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank and designated __________.

The Bidder has become informed as to the location and characteristics of the proposed installations, has become informed as to the kind of facilities required before and during the delivery and installation of the equipment, material, and software and has become acquainted with the labor conditions which would affect the work.

The Bidder agrees that if its bid is accepted the following terms and conditions shall govern.

If, in submitting this Proposal, the Bidder has taken any exception to the form of proposal furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit and they may exclude the Proposal from consideration in determining the award of the Contract.

Article I

[Section 1. Bid Price. The Bidder will engineer, furnish, deliver, and install the equipment, materials, and software described in the Specifications for the following sums:]

				Time in calendar days					
Project (see notes 1, 2 and 3)	Materials, equipment, and software	Installation	Base bid	Delivery	Completion of installation	Completion of the project (see note 4)	Spare parts	Item	Maintenance tools
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	$	$	$				$	a	$
	$	$	$				$	b	$
	$	$	$				$	c	$
	$	$	$				$	d	$
	$	$	$				$	e	$
	$	$	$				$	f	$
	$	$	$				$	g	$
	$	$	$				$	h	$
	$	$	$				$	i	$
	$	$	$				$	j	$
Totals	$	$	XXXXXXX-XXX	XXXXXXX-XXX	XXXXXXX-XXX	XXXXXXX-XXX	$	XXX	$
Total Base Bid			$	XXXXXXX-XXX	XXXXXXX-XXX	XXXXXXX-XXX	XXXXXXX-XXX	XXXXX	XXXXXXX-XXX
Alternate No. 1	$	$	$				$	k	$
Alternate No. 2	$	$	$				$	l	$
Alternate No. 3	$	$	$				$	m	$
Alternate No. 4	$	$	$				$	n	$
Alternate No. 5	$	$	$				$	o	$
Alternate No. 6	$	$	$				$	p	$

Note 1: If a remote switching terminal, so designate and list after host office.
Note 2: All items included in a Project shall have the same completion schedule.
Note 3: Each Project shall be separated by a blank line.
Note 4: Time in calendar days for Completion of the Project shall be 60 days after the time established for Completion of Installation.

Section 2. Acceptable Equipment. Unless otherwise specified by the Owner (and agreed to in advance in writing by REA), the Bidder agrees to furnish under this Proposal only equipment which is currently covered by a letter of acceptance issued by the Chairman, Committee "A" (Telephone). [Note: for convenience of borrowers and others, domestically manufactured products are included in REA Bulletin 17551–100.] The Bidder agrees also to furnish only materials, equipment and software which are new and of most recent issue and manufacture, as of the date of the bid opening, or of near future release for which the Bidder can assure timely delivery.

Section 3. Changes in Project. The Owner, with the approval of the Administrator, may from time to time during the performance of the Contract effected by the acceptance of this Proposal, make reasonable changes, additions to or subtractions from the Specifications which are part of the Proposal as conditions may warrant. However, if substantial changes in the Project shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within thirty (30) days after any such change is made. Further, if the cost to the Bidder shall be increased or decreased by any such change or addition, the Contract price shall be increased or decreased by a reasonable amount in accordance with a contract amendment signed by the Owner and the Bidder and approved by the Administrator. No claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The Delivery or Completion of Installation times specified under Columns 5, "Delivery", and 6, "Completion of Installation," in Article I, section 1, can only be changed by a Contract amendment approved by the Bidder, the Owner and REA.

Section 4. Taxes. The bid prices herein set forth do not include any amounts payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies, equipment or software to be incorporated in the Project(s). If any such tax is applicable to the sale, purchase or use of materials, supplies, equipment or software hereunder, the amount thereof shall be stated separately on all invoices and paid by the Owner.

Article II

Delivery and Installation

Section 1. Time of Completion of Installation. The time of delivery of materials, equipment, and software and of Completion of Installation are of the essence of this Contract. The Bidder shall deliver the materials, equipment, and software required hereunder for each Project upon the time intervals established under Column 5, "Delivery," in Article I, section 1, after the Administrator shall have approved this Contract in writing, and shall prosecute diligently and complete the installation of materials, equipment and software for each Project in accordance with the terms of this Contract and Specifications to the satisfaction of the Owner and the Administrator within the number of calendar days specified under Column 6, "Completion of Installation," in Article I, section 1. The times for such Delivery or such Completion of Installation shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. However, no such extension of time shall be granted the Bidder unless within thirty (30) days after Bidder becomes aware of the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner. Further, no delay in such time for delivery of materials, equipment and software or Completion of Installation or in the progress of the work shall result in any liability on the part of the Owner, except that the Owner shall be responsible for and shall pay the Bidder on demand all additional, supportable costs and expenses incurred by the Bidder due to delays to the extent such delays are caused by the Owner's failure to perform its obligations under this Contract unless the Owner's failure to perform is caused by forces beyond its control.

Section 2. Sequence of Installation. All Projects shall be completed in the sequence in which they are listed under Column 1, "Project," in Article I, section 1.

Section 3. Supervision and Inspection. The Bidder shall give sufficient supervision to the work at the site of the Project(s), using the Bidder's best skill and attention. The Bidder shall carefully study and compare all drawings, specifications, and other instructions and shall promptly report to the Owner any error, inconsistency or omission which Bidder may discover. The Bidder shall keep on the Project(s) during its progress a competent superintendent (hereinafter called the "Superintendent") and any necessary qualified assistants, all satisfactory to the Owner. The Superintendent shall represent the Bidder and all directions given to the Superintendent by the Owner shall be as binding as if given to the Bidder. When requested by the Bidder, such directions shall be confirmed in writing.

Section 4. Inspection and Tests. The installation of materials, equipment and software hereunder and all materials, equipment and software used therein shall be subject to the inspection, test and approval of the Owner and Administrator, in accordance with the Specifications. The Bidder shall furnish all pertinent information required concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect pertinent records (other than manufacturing cost information) of the Bidder and of any subcontractor relevant to this Project(s). The Bidder shall provide all reasonable facilities necessary for such inspection and tests, except that the Bidder is not required to provide test equipment for the Owner's tests unless specifically required in the Specifications. Failure of the Owner to make inspections shall not release the Bidder from performance required hereunder.

The Bidder shall notify the Owner in writing upon Completion of Installation of each Project and provide a copy of the results of tests, if any, conducted by the Bidder.

The Owner shall make inspections and tests of each Project for compliance with the Specifications and provide the Bidder the results of such inspections and tests on REA Form 517, Results of Acceptance Tests. If the Owner has not completed its inspections and tests and provided the Bidder the results on REA Form 517 within thirty (30) days after the written notification of Completion of Installation from the Bidder, the Owner shall (1) pay to the Bidder the costs incurred by the Bidder as a result of this delay, and (2) grant an extension of time for the Completion of the Project equal to the number of days from the date of the end of the thirty (30) day period until the date the Owner provides the REA Form 517 to the Bidder.

Within thirty (30) days of receipt of the REA Form 517 from the Owner, the Bidder shall correct all deficiencies, if any, listed on the REA Form 517 and notify the Owner in writing of such corrections and deliver to the Owner the documents set forth in Article III, section 2, at which time a final Owner's inspection and test of each Project shall be conducted. If tests subsequent to this are made necessary by the Bidder's failure to satisfactorily resolve all such deficiencies as previously listed on the REA Form 517, the Bidder shall pay the Owner for the cost incurred by the Owner for all such subsequent tests.

Section 5. Delivery of Possession and Control to the Owner. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project or on an earlier date if agreed under Article IV, section 2.

Section 6. Employees. The Owner shall have the right to require the removal of any employee of the Bidder from the Project site if in the judgment of the Owner such removal is necessary in order to protect the interest of the Owner.

Section 7. Defective Workmanship, Materials or Software. Throughout the warranty period defined below the Bidder shall, within thirty (30) days of written notice from the Owner, and without charge to the Owner, at the Bidder's option, either remedy or replace any materials, equipment or software found to be defective in material, workmanship or installation, or not in conformity with the Specification. This is subject to the following definitions and conditions:

(a) The warranty start date for a Project is the date of delivery of possession and control by the Bidder to the Owner of that Project included in the Contract. Refer to Article II, section 5. The warranty period is twelve (12) months from the warranty start date, or six (6) months from Completion of the Project, whichever results in the longer period of coverage.

(b) Without regard to the expiration of the warranty period set forth above, the Bidder warrants to the Owner that any Software furnished under this Contract shall function, for a period of five (5) years from the warranty start date defined in the Contract, in accordance with the specifications and any written or printed technical material provided by the Bidder to explain the operation of the Software and aid in its use. The Bidder shall correct all deficiencies within thirty (30) days from the date of receipt by the Bidder of written notice of such deficiencies from the Owner. An extension of this thirty (30) day period may be allowed only if agreed upon by the Owner. It shall be the Bidder's obligation to insert and thoroughly test, at no charge to the Owner, any software amendment or alteration provided to satisfy the obligations of this Section 7. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be extended to a date ninety (90) days after the deficiency has been corrected.

(c) The Owner shall pay the Bidder for any use of the Bidder's technical assistance center except for usage to diagnose defects covered by this warranty.

(d) This warranty is not diminished by the acceptance of workmanship, materials, equipment, or software, or by the issuing of any certificate with respect to Completion of the Project.

(e) This warranty does not cover defects in materials, equipment or software that are caused by modifications to or abuse of materials, equipment or software by the Owner.

(f) The Owner shall bear the cost and risk of shipping defective components to the Bidder's designated repair center. The Bidder shall bear the cost and risk of shipping new or repaired replacement components to the Owner.

Article III

Payments and Releases of Lien

Section 1. Payment to Bidder.

(a) The Owner shall pay the Bidder upon the basis of written estimates of the materials, equipment, and software delivered at the site of the Project, presented by the Bidder, and approved by the Owner, the following percentages of the price of the materials, equipment, and software for each Project set forth under Column 2, "Materials, Equipment, and Software," in Article I, Section 1, as and if revised:

(i) Forty-five percent (45%) when fifty percent (50%) of the materials, equipment, and software for each Project has been delivered at the site of the Project, and

(ii) Ninety percent (90%) when all the materials, equipment, and software required to place each Project into operation has been delivered at the site of the Project.

(b) Upon written notification of the Completion of Installation of each Project, the Owner shall pay the Bidder ninety percent (90%) of the Base Bid plus accepted alternates for that Project.

(c) Upon the Completion of Installation, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Owner shall inspect the work performed hereunder and if the work shall be found to be in accordance with the Specifications and all provisions hereunder, the Owner shall certify as to that fact and as to the amount of the balance found to be due to the Bidder. No later than thirty (30) days after Completion of the Contract, as defined in Article VII, section 1, "Definitions," the Owner shall submit such final certificate to the Administrator for approval and when such approval has been given, the Owner shall pay to the Bidder all unpaid amounts to which the Bidder shall be entitled hereunder; provided, however, such final payments shall be made not later than sixty (60) days after Completion of the Contract unless approval by the Administrator shall be withheld or delayed due to Bidder's actions or failure to act.

(d) Payment on undisputed invoices submitted by the Bidder shall be due thirty (30) days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate one and one-half percent (1½%) higher than the "Prime Rate" published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

(e) Notwithstanding other provisions of this Article III, the Bidder, shall, at its request in writing, receive payment in full for each Project upon Completion of Installation of such and upon:

(i) Completion of the final acceptance tests of such Project as certified on REA Form 754, Certificate of Completion, Central Office(s) and approved by the Owner.

(ii) Submission to the Owner and Administrator of the releases of lien and Certificate of Contractor referred to in section 2 hereof or in lieu thereof, where the Bidder is the manufacturer, the execution of the Certificate of Contractor and Indemnity Agreement on REA Form 754, all in respect of such Project.

(iii) Approval by the Administrator of the Certificate of Completion, REA Form 754 in respect of such Project.

Ten percent (10%) of the contract price of one central office shall be retained until the Bidder shall have furnished the certificates and releases of lien or indemnity agreement in respect of the Project required by section 2 of this Article III.

(This Section 1(e) is to be used only if (1) the Contract includes at least one central office and (2) the Owner wishes to allow the partial closeout procedure. The Owner shall strike out this Section 1(e) if the partial closeout procedure is not to be allowed)

(f) Acceptance by the Owner of equipment, materials, workmanship or software while the Bidder is in default under any provision of this Contract shall not be construed as a waiver by the Owner of any right hereunder including, without limitation, any right to liquidated damages the Owner may have by virtue of Article V, section 2.

Section 2. Release of Liens. Upon the Completion of Installation by the Bidder, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, except as specified in Article III, section 1(e), the Bidder shall deliver to the Owner (a) two original Waiver and Release of Lien in the form attached hereto, from manufacturers, material suppliers and subcontractors who have furnished materials or services for the work, and (b) two original Certificate of Contractor, in the form attached hereto, to the effect that all labor has been paid and that all such releases have been submitted to the Owner; and the Owner shall deliver to the Administrator for approval one of the originals of each such release and certificate.

In lieu of releases of lien where the Bidder is the manufacturer of the equipment, the Bidder may deliver to the Owner, in duplicate in the form attached hereto, a Certificate of Contractor and Indemnity Agreement, stating that all manufacturers, material suppliers and subcontractors who have furnished materials or services for the Project(s) have been paid in full, and agreeing to indemnify the Owner against any liens arising out of the Bidder's performance hereunder which may have been or may be filed against the Owner.

In this Article III "manufacturer" shall mean a Bidder who makes, produces, or manufactures the equipment and whose interest, including non-contracted installation, represent more than fifty percent (50%) of the value of the Total Contract Price.

Article IV

Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. At all times when equipment and materials are being delivered and installed the Bidder shall exercise reasonable precautions for the safety of employees on the job and of the public and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State or Municipal laws or regulations. The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at all times keep the premises free from accumulations of waste material or rubbish caused by its employees or work, and at the completion of the work the Bidder shall remove all rubbish from and about the Project(s) and all its tools, scaffolding and surplus materials and shall leave its work "broom clean."

(b) The work, from its commencement to completion, or to such earlier date or dates when the Owner may take possession and control, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith, and in connection with the equipment, materials and software to be used therein, shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the equipment, materials and software under the control of the Bidder by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence. The Bidder shall hold the Owner harmless from any and all claims for injuries of persons or for damage to property happening by reason of any negligence on the part of the Bidder or any of the Bidder's agents, subcontractors or employees during the control by the Bidder of the Project(s) or any part thereof. The Owner shall promptly notify the Bidder in writing of any such claims received and, except where the Owner is the claimant, shall give to the Bidder full authority and opportunity to settle such claims, and reasonably cooperate with the Bidder in obtaining information relative to such claims.

(c) Monthly reports of all accidents shall be promptly submitted to the Owner by the Bidder giving such data as may be prescribed by the Owner.

Section 2. Termination of Bidder's Risks and Obligations. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project. However, at any time after payment by the Owner to the Bidder of ninety percent (90%) of the Total Base Bid plus accepted alternates for that Project, but prior to Completion of the Project, the Owner and the Bidder may agree in writing to an earlier date of delivery of possession and control. Upon such delivery of possession and control of any Project the Bidder's risks and obligations as set forth in Article IV, section 1(b), pertaining to such

Project shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of its obligation for full performance under the Specifications, or its liability with respect to defective workmanship or materials as specified in Article II, section 7 hereof. The equipment shall not be placed in service until delivery of possession and control to the Owner has been accomplished, as set forth above.

Section 3. Insurance. During the Bidder's performance hereunder, the Bidder shall take out and maintain fully paid insurance providing not less than the minimum coverage required by 7 CFR part 1788, subpart C.

The Owner shall have the right to require public liability insurance and property damage liability insurance in an amount greater than those required in 7 CFR part 1788, subpart C. If this requirement is included in the plans and specifications used for bidding, the added costs shall be included in the bid price. If the requirement is added after the Contract is approved, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price, by Contract amendment.

Upon request by the Administrator, the Bidder shall furnish to the Administrator a certificate in such form as the Administrator may prescribe evidencing compliance with the foregoing requirements.

Section 4. Purchase of Materials. The Bidder shall purchase all materials and supplies except software outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title or interest therein. Materials and supplies other than software shall become the property of the Owner as the Owner makes payments therefor to the Bidder in accordance with Article III, Section 1(a).

Section 5. Software License. The software licensing agreement, if required, covering the rights, terms and conditions of the use and assignability of all software integral to the operation of the Project(s), shall be in the form of Addendum 1 to this Contract.

Section 6. Assignment of Guarantees. All guarantees of materials, equipment, workmanship and software running in favor of the Bidder shall be transferred and assigned to the Owner upon Completion of the Project and at such time as the Bidder receives final payment. Any such guarantees shall be in addition to the Bidder's warranty defined in Article II, section 7. This provision may be modified with respect to a particular warranty if the Bidder demonstrates to the satisfaction of REA and the Owner that a transfer is not possible.

Section 7. Patent, Copyright, Trademark and Trade Secret Infringement. The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent, copyright, trademark or violation of trade secrets covering any equipment or software used in the work, except for items of the Owner's design or selection. If the Owner's use of equipment or software is enjoined, the Bidder shall promptly, at its own expense, modify or replace the infringing equipment or software so that it no longer infringes but remains functionally equivalent, or obtain for the Owner a license or other right to use. This shall be in addition to any other rights or claims which the Owner may have. The Bidder shall, at its own expense, (and the Owner agrees to permit Bidder to do so,) defend any suits which may be instituted by any party against the Owner for alleged infringement of patents, copyright, trademark or violation of trade secrets relative to the Bidder's performance hereunder. Either party shall notify the other promptly of any such claims, and the Owner shall give to the Bidder full authority and opportunity to settle such claims, and shall reasonably cooperate with the Bidder in obtaining information relative to such claims.

Section 8. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable laws, statutes, ordinances, rules and regulations. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Anti-Kickback Acts, as amended (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*), and any rules and regulations issued pursuant thereto, and 18 U.S.C. 201, 286, 287, 641, 666, 874, 1001, 1361 and 1366, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of the Governmental agencies having jurisdiction in the premises.

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985–1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Public Law 101–121, section 319, 103 Stat. 701, 750–765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

Article V

Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder in the performance of any of the work hereunder, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the surety or sureties upon the Bidder's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within thirty (30) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall have been made by the Bidder or its surety or sureties, the Owner may take over the performance of the Bidder's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its surety or sureties shall be liable to the Owner for any supportable cost or expense in excess of the bid price occasioned thereby. In such event, the Owner may take possession of and utilize, in completing the Project(s), any tools, supplies, equipment, appliances and plant belonging to the Bidder which may be situated at the site of the Project(s). The Owner, in such contingency, may exercise any rights, claims or demands which the Bidder may have against third persons in connection herewith and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. Should the Bidder fail to complete any Project as shown under Column 7, "Completion of the Project," in Article I, Section 1, within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall, so long as the subject Project shall not have been placed in service, have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder, the sum of:

____

dollars ($___________)

for __________________________________

(Project)

for __________________________________

dollars ($___________)

for __________________________________

(Project)

dollars ($___________

for __________________________________

per day for each and every day that such completion is delayed beyond the scheduled time for Completion of the Project, as liquidated damages and not as a penalty, up to the amount of the respective Base Bid plus accepted alternates for the affected Project: *Provided*, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount claimed as liquidated damages was computed. The Bidder shall pay to the Owner the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Bidder.

At the technical sessions, each Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner allows these features to be bid as separate Projects, then they are to be individually listed under Columns 1 through 10, in Article I, section 1. These unproven features and capabilities are to be individually listed in this section 2 also, with liquidated damages amounts determined by the Owner and stated for each. If a Bidder neglects to identify any such feature at the technical session, delay in providing the feature is considered a delay in completing the associated Project and the Owner may assess liquidated damages listed for that Project regardless of whether the Project is placed in service.

Section 3. Consequential Damages. In no event shall the Bidder's liability for incidental or consequential loss or damage, except for personal injury or tangible property damage, exceed the amount of ten times the total contract price, as amended.

Section 4. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Owner exercise any right or enforce any remedy which the Owner may exercise or enforce hereunder.

Section 5. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of section 2 of this Article V shall be the exclusive measure of damages for failure by the Bidder to have effected the Completion of Project within the time herein agreed upon.

Article VI

Equal Employment

Section 1. The Bidder.

(a) The Bidder represents that:

(1) It has, ______ does not have ______, 100 or more employees, and if it has, that

(2) It has ______, has not ______, furnished the Equal Employment Opportunity Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

(b) The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

(c) The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(d) The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 2. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Contractor will send to each labor union or representative of workers with which the Bidder has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in the said Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including actions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 3. Equal Employment Opportunity Specifications.

(a) As used in these specifications:

"Covered area" means the geographical area described in the solicitation from which this contract resulted;

"Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

"Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941; and

"Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown

Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g) (i) through (xvi) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(ii) above.

(vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60–3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(xiv) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (g) (i) through (xvi). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g) (i) through (xvi) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order 11246 if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 4. In this Article VI—

(a) The term "Contractor" shall also mean "Bidder" or "Subcontractor" as applicable.

(b) The provisions of sections 2 & 3 are applicable to the extent required by law. In determining whether these Sections are applicable, reference should be made to Office of Federal Contract Compliance Programs regulations (41 CFR part 60).

Article VII

Miscellaneous

Section 1. Definitions.

The term "Completion of the Contract" shall mean accomplishment of Completion of the Project for all central offices (and associated remote switching terminals), features and services listed under Column 1, "Project," in Article I, Section 1, and all alternates accepted by the Owner, on the Owner's Acceptance.

The term "Completion of Installation" shall mean full performance by the Bidder of the Bidder's obligation under the Contract and all amendments and revisions thereof, for a Project, except that it shall not include the acceptance tests nor performance of the Bidder's obligations in respect of (i) releases of lien and Certificate of Contractor under Article III, section 2, hereof and (ii) other final documents. The actual date of Completion of Installation shall be the date the Bidder submits to the Owner written notification that the Project is completed in conformance with the Specifications and ready for the Owner's acceptance inspection and tests as provided for under Article II, section 4.

The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations herein set out and all amendments and revisions thereof for a central office (and all associated remote switching terminals), feature or service. The scheduled date for Completion of the Project is sixty (60) days after Completion of Installation as specified under Column 7, "Completion of Installation," in Article I, section 1, as amended or adjusted under Article II, section 1, and section 4. The scheduled date for Completion of the Project is the date from which liquidated damages are computed. The actual date of Completion of the Project shall be the date of the receipt by the Owner from the Bidder of (a) all documents listed in Article III, section 2, (b) other final documents, and (c) written notification that all deficiencies listed on the REA Form 517, Results of Acceptance Test, have been corrected; provided, that the final inspection and tests by the Owner finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of Completion of the Project shall be the date that the deficiencies are fully and satisfactorily resolved as determined by subsequent Owner's tests. The Certificate of Completion approved and signed by the Owner and approved in writing by the Administrator shall be conclusive evidence as to the fact of Completion of the Project and the date thereof. Full compliance with the procedure for "Completion of the Project" and an individual Certificate of Completion is required for each Project listed under Column 1, "Project," in Article I, section 1.

The Contract shall consist of the Notice and Instructions to Bidders, the Bidder's Proposal and the Owner's Acceptance, the Contractor's Bond and the Specifications.

The term "days" shall mean calendar days.

The term "minor errors or irregularities" shall mean a defect or variation in a Bidder's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other Bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

The term "placed in service" shall mean used by the Owner to earn revenue.

The term "Project" shall mean a central office and all associated remote switching terminals (if any), a remote switching terminal if purchased without a supporting central office, a feature (or group of features), or a service (or group of services), which is listed under Column 1, "Project," in Article I, section 1. The only instance in which a remote switching terminal can constitute a separate Project is where such remote switching terminal is purchased with associated modifications to its supporting host switch but no other modifications to the host switch are specified. A Project will have a single completion schedule listed under Column 7, "Completion of Installation," in Article I, section 1, and a single liquidated damages amount shown in Article V, section 2. The Contract may consist of one or more Projects.

The term "Software" shall mean computer programs contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the central processor.

control and perform input/output operations, perform error diagnostic and recovery routines, control call processing, and perform peripheral control, and administrative and maintenance functions; as well as associated documentation, excluding source code, used to describe, maintain and use the programs provided under the Contract.

The term "Specifications" shall mean the minimum performance requirements of the Owner as contained in the documents listed below, which are either attached or become a part of the Contract by reference, as amended by specific written exceptions contained in the Bidder's proposal and accepted by the Owner and the Administrator:

REA Form ________, dated ________

REA Form ________, dated ________

Section 2. Continuing Equipment Support—Parts, Service, and Software. In addition to warranty repairs and replacement, the Bidder shall offer repair service and repair parts to the Owner in accordance with the Bidder's practices and terms then in effect, for the Bidder's manufactured equipment furnished pursuant to this Agreement. Such repair service or repair parts shall be available for as long as the Bidder is manufacturing or stocking such equipment, or for no less than eight (8) years after the Bidder has ceased manufacturing or offering for sale such equipment. The Bidder shall also offer software support services to the Owner in accordance with the Bidder's practices, terms, and charges then in effect, but in any event for no less than five (5) years after the Bidder has ceased manufacturing or offering for sale such software.

Section 3. Materials and Supplies. The Bidder shall use only such unmanufactured articles, materials and supplies as have been mined or produced in the United States, Mexico or Canada and only such manufactured articles, materials and supplies as have been manufactured in the United States, Mexico or Canada substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico or Canada; provided that foreign articles, materials or supplies may be used in the event and to the extent that the Administrator shall expressly authorize in writing such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Owner such certificate or certificates, signed by the Bidder and all subcontractors, with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Bond. The Bidder shall furnish to the Owner a Contractor's Bond in conformance with the requirements of 7 CFR part 1788, subpart C.

Section 5. Confidentiality. All information supplied by the Bidder to the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Owner, shall be treated by the Owner as confidential information, and the Owner shall not reproduce any such information except for its own internal use and as authorized by this Contract, and shall use any information only for archival backup, in-house training, operating, maintenance and administrative purposes and in conjunction with its use of the equipment, materials and software furnished hereunder. All information supplied to the Bidder by the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Bidder, shall be treated by the Bidder as confidential information, and shall not be used by the Bidder for any purpose adverse to the interests of the Owner, and shall not be reproduced or distributed by the Bidder except for the Bidder's use in its performance under this Contract. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. If the Bidder has failed to provide continuing equipment support as described in Article VII, section 2, the Owner is released from this obligation. This provision does not restrict release of information by the United States of America pursuant to the Freedom of Information Act or other legal process.

Section 6. Entire Agreement. The terms and conditions of this Contract as approved by REA supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

Section 7. Survival of Obligations. The rights and obligations of the parties, which by their nature, would continue beyond the termination, cancellation, or expiration of this Contract, shall survive such termination or expiration.

Section 8. Non-Waiver. No waiver of any terms or conditions of this Contract, or the failure of either party to enforce strictly any such term or condition on one or more occasions, shall be construed as a waiver of the same or of any other terms or conditions of this Contract on any other occasion.

Section 9. Releases Void. Neither party shall require releases or waivers of any personal rights from representatives or employees of the other in connection with visits to its premises, nor shall such parties plead such releases or waivers in any action or proceeding.

Section 10. License. The Bidder shall comply with all applicable construction codes.

(a) The Bidder warrants that it possesses contractor's license number ________ issued to it by the State of ________ in which the project(s) is located, and said license expires on ________, 19____.

(b) The Bidder warrants that no license is required in the state in which the Project(s) is located.

(Bidder shall cross out that subsection that does not apply)

Section 11. Nonassignment of Contract. The Bidder shall not assign the Contract, effected by acceptance of this Proposal, or any part hereof, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof, without the approval in writing of the Owner, the Surety, and the Administrator. However, the Bidder may subcontract the whole or any part of the installation work to be performed at the installation site, (as distinguished from furnishing and delivery of equipment and materials), provided that; (a) the Bidder shall remain responsible for the performance thereof and (b) the Bidder shall obtain the consent of the surety to such subcontract. A copy of such consent shall be submitted to the Owner and the Administrator.

Section 12. Choice of Law. The rights and obligations of the parties and all interpretations and performance of this Contract shall be governed in all respects by the laws of the State of ________ except for its rules with respect to the conflict of laws.

Section 13. Approval of the Administrator. The acceptance of this proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date hereof:

By ________________________

(Signature of Bidder)

____

(Name—Type or Print)

____

(Title)

____

(Company Name of Bidder)

____

____

(Address of Bidder)

Attest:

____

(Secretary)

____

(Date)

The Proposal must be signed with the full name of the Bidder. In the case of a partnership the Proposal must be signed in the firm name by each partner. In the case of a corporation the Proposal must be signed in the corporate name by a duly authorized officer and the Corporate seal affixed and attested by the Secretary of the Corporation.

(If executed by other than the President, a Vice-President, a partner or the individual owner, a power of attorney or other legally acceptable document authorizing execution shall accompany this contract, unless such power of attorney is on file with REA.)

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the Proposal of ________________________

____

for the Project(s) herein described for the Total Base Bid of

$ ____________ and

Alternate For:

Spare Parts, Item(s)	$ ______
Maintenance Tools, Item(s)	$ ______
Alternate No. 1 (add) (deduct)	$ ______
Alternate No. 2 (add) (deduct)	$ ______
Alternate No. 3 (add) (deduct)	$ ______

Alternate No. 4 (add) (deduct) $ ______
Alternate No. 5 (add) (deduct) $ ______
Alternate No. 6 (add) (deduct) $ ______
The total contract price is $ ______

By ______
OWNER
ATTEST: ______
PRESIDENT

______
SECRETARY

______
DATE OF ACCEPTANCE

[End of clause]

Dated: June 2, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-14058 Filed 6-16-94; 8:45 am]

BILLING CODE 3410-15-P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 412

Acceptance of Payment From a Non-Federal Source for Travel Expenses

AGENCY: Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: This final rule implements the statutory authority of the Export-Import Bank of the United States (Eximbank) to accept from non-Federal sources reimbursement for travel and subsistence expenses incurred by Eximbank employees in connection with official travel to a meeting or similar event. Authorized meetings or similar events under this final rule do not include those described in the Federal Travel Regulations permitting Federal agencies to accept payments from non-Federal sources for travel expenses. This final rule, by effectuating Eximbank's statutory gift acceptance authority, will further the mission of Eximbank by enabling Eximbank to issue more official travel orders for employees to conduct agency business than Eximbank would otherwise be able to issue under its authorized annual travel budget.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Boyer, Export-Import Bank of the United States, Office of The General Counsel, telephone (202) 377-7605.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2(a)(1) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(a)), enables Eximbank, subject to regulations issued pursuant to 5 U.S.C. 553, to accept reimbursement for travel and subsistence expenses incurred by a director, officer or employee of Eximbank in accordance with subchapter I of chapter 57 of title 5, United States Code. In order to implement this statutory authority, Eximbank is issuing a regulation that sets forth the parameters for accepting payment from a non-Federal source for an Eximbank employee's travel and subsistence expenses to attend or participate in an event relating to the employee's official duties. The regulation applies to events other than a "meeting or similar function" as defined in 41 CFR 304-1.2(c)(3). The rule enables Eximbank to accept travel expense payments in order to send employees to such functions as meetings, formal gatherings, site visits, negotiation sessions and other similar events in which the employee's participation would further the mission of Eximbank.

In order to avoid any actual impropriety or appearance of impropriety in the acceptance of travel expense payments, the regulation requires that the employee's supervisor and the designated agency ethics official or his/her designee determine that Eximbank's interest in the employee's attendance at the meeting or similar event outweighs concern that acceptance of the payment by Eximbank may cause a reasonable person to question the integrity of Eximbank's programs or operations. As provided in the authorizing statute, the regulation limits payments from a non-Federal source for travel and subsistence payments to the maximum per diem or actual service limitations prescribed in 41 CFR chapter 301.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As General Counsel of Eximbank, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this final rule. The reason for this determination is that this rulemaking is related to Eximbank organization, procedure and practice.

Regulatory Flexibility Act

As General Counsel of Eximbank, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities.

Paperwork Reduction Act

As General Counsel of Eximbank, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 12 CFR Part 412

Government employees, Travel and transportation expenses.

Dated: June 13, 1994.

Carol F. Lee,

General Counsel, Export-Import Bank of the United States.

For the reasons set forth in the preamble, the Export-Import Bank of the United States is amending title 12, chapter IV, of the Code of Federal Regulations, by adding a new part 412 to read as follows:

PART 412—ACCEPTANCE OF PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Sec.
412.1 Authority.
412.3 General.
412.5 Policy.
412.7 Conditions for acceptance.
412.9 Conflict of interest analysis.
412.11 Payment guidelines.
412.13 Limitations and penalties.

Authority: 5 U.S.C. 5701-5709; 12 U.S.C. 635(2)(a)(1).

§ 412.1 Authority.

This part is issued under the authority of 5 U.S.C. 553, 5 U.S.C. 5701-5709 and 12 U.S.C. 635(2)(a)(1).

§ 412.3 General.

(a) *Applicability.* This part applies to acceptance by the Export-Import Bank of the United States (Eximbank) of payment from a non-Federal source for travel, subsistence, and related expenses with respect to the attendance of an employee in a travel status at any meeting or similar event relating to the official duties of the employee, other than those described in 41 CFR 304-1.2. This part does not authorize acceptance of such payments by an employee in his/her personal capacity.

(b) *Solicitation prohibited.* An employee shall not solicit payment for travel, subsistence and related expenses from a non-Federal source. However, after receipt of an invitation from a non-Federal source to attend a meeting or similar event, Eximbank or the employee may inform the non-Federal source of this authority.

(c) *Definitions.* As used in this part, the following definitions apply: