

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AK06

Prevailing Rate Systems; Change in the Survey Month for the Bureau of Reclamation Mid-Pacific Region Survey

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to change the timing of annual wage surveys conducted by the Bureau of Reclamation (BOR), Department of the Interior, to determine prevailing rates of pay for supervisors of negotiated rate wage employees in the Bureau's Mid-Pacific Region.

EFFECTIVE DATE: This regulation is effective on January 31, 2004.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez at (202) 606-2838; FAX at (202) 606-4264; or e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On October 31, 2003, the Office of Personnel Management (OPM) published a proposed rule (68 FR 62027) to change the timing of annual wage surveys conducted by the Bureau of Reclamation (BOR), Department of the Interior (DOI), to determine prevailing rates of pay for supervisors of negotiated rate wage employees in the Bureau's Mid-Pacific Region. The proposed rule had a 30-day comment period, during which we received no comments. Currently, BOR conducts wage surveys in the region in October each year. Wage surveys will be conducted in the future in February.

DOI asked OPM to change the survey month for local wage surveys in the Mid-Pacific Region because February

represents the best timing in relation to wage adjustments in the surveyed local private enterprise establishments and would improve the quality of data BOR collects during local wage surveys in this special wage area. Local private industry establishments surveyed by BOR in the Mid-Pacific Region typically make their wage adjustments effective in January of each year. BOR will conduct wage surveys in February in the Mid-Pacific Region beginning in calendar year 2004. Since DOI implements the results of the wage surveys in the month following the survey month, wage adjustments for supervisors of negotiated rate wage employees in the Mid-Pacific Region will become effective in March. Thus, they will more closely coincide with local prevailing rates.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.285 [Amended]

■ 2. In § 532.285 paragraph (d), amend the special wage area listing for the Mid-Pacific Region by removing from beginning month of survey "October" and adding in its place "February."

[FR Doc. 04-3252 Filed 2-12-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724, 1726, and 1755

RIN 0572-AB67

Revision of Electric Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to revise its standard forms of contracts that borrowers are required to use when contracting for construction and procurement, that are or will be financed by loans made or guaranteed by RUS, in accordance with applicable RUS regulations. RUS is updating, consolidating, and streamlining these standard forms of contracts. These changes are being made to improve the usefulness of the standard forms of contract and to make it easier for RUS borrowers to utilize these standard forms of contract.

DATES: This rule will become effective on March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250-1569. Telephone: (202) 720-1398. FAX: (202) 720-7491. E-mail: Fred.Gatchell@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

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

Executive Order 12988

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

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

National Environmental Policy Act Certification

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

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0572-0107.

Unfunded Mandates

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

subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The standard loan agreement between RUS and its electric borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. RUS also provides forms of contracts which serve as guidance to borrowers and which borrowers may use at their discretion. RUS is updating, consolidating, and streamlining the standard forms of contracts used for construction and procurement. The forms affected are:

Primary Contract Forms

1. RUS Form 198, Rev. 2-95, Equipment Contract. This form is used for equipment purchases.

2. RUS Form 200, Rev. 2-95, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment.

3. RUS Form 201, Rev. 2-95, Right-of-Way Clearing Contract. This form is used for distribution line right-of-way clearing work which is to be performed separate from line construction.

4. RUS Form 203, Rev. 2-95, Transmission System Right-of-Way Clearing Contract. This form is used for transmission right-of-way clearing work which is to be performed separate from line construction.

5. RUS Form 257, Rev. 2-95, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction.

6. RUS Form 764, Rev. 2-95, Substation and Switching Station Erection Contract. This form is used to construct substations and switching stations.

7. RUS Form 786, Rev. 2-95, Electric System Communications and Control Equipment Contract. This form is used for delivery and installation of equipment for system communications.

8. RUS Form 790, Rev. 2-95, Distribution Line Extension Construction Contract (Labor and Materials). This form is used for limited distribution construction accounted for under work order procedure.

9. RUS Form 792, Rev. 2-95, Distribution Line Extension Construction Contract (Labor Only). This form is used for limited

distribution construction accounted for under work order procedure.

10. RUS Form 830, Rev. 2-95, Electric System Construction Contract (Labor and Materials). This form is used for distribution and transmission line project construction.

11. RUS Form 831, Rev. 2-95, Electric Transmission Construction Contract (Labor and Materials). This form is used for transmission line project construction.

Secondary Contract Forms

1. RUS Form 168b, Rev. 2-95, Contractor's Bond. This form is used to obtain a surety bond and is included in RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, and 831.

2. RUS Form 168c, Rev. 2-95, Contractor's Bond (less than \$1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee.

3. RUS Form 180, Rev. 2-95, Construction Contract Amendment. This form is used to amend distribution line construction contracts.

4. RUS Form 181, Rev. 2-95, Certificate of Completion, Contract Construction for Buildings. This form is used for the closeout of RUS Form 257.

5. RUS Form 187, Rev. 2-95, Certificate of Completion, Contract Construction. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

6. RUS Form 213, Rev. 11-99, Certificate ("Buy American"). This form is used to document compliance with the "Buy American" requirement.

7. RUS Form 224, Rev. 2-95, Waiver and Release of Lien. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

8. RUS Form 231, Rev. 2-95, Certificate of Contractor. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

9. RUS Form 238, Rev. 2-95, Construction or Equipment Contract Amendment. This form is used to amend contracts except distribution line construction contracts.

10. RUS Form 251, Rev. 2-95, Material Receipt. This form is used to document receipt of owner furnished materials and is included in RUS Forms 764, 830, and 831.

11. RUS Form 254, Rev. 2-95, Construction Inventory. This form is used for the closeout of RUS Forms 203, 764, 830, and 831.

12. RUS Form 307, Rev. 2-95, Bid Bond. This form is used to obtain a bid

bond and is included in RUS Forms 200, 203, 257, 764, 830, and 831.

13. RUS Form 792b, Rev. 2-95, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of and is included in RUS Forms 201, 790, 792.

14. RUS Form 792c, Rev. 2-95, Supplemental Contract for Additional Project. This form is used to amend and is included in RUS Forms 201, 790, 792.

Guidance Forms

1. RUS Form 172, Rev. 9-58, Certificate of Inspection, Contract Construction. This form is used to notify RUS that construction is ready for inspection.

2. RUS Form 173, Rev. 3-55, Materials Contract. This form is used for distribution, transmission, and general plant material purchases.

3. RUS Form 274, Rev. 6-81, Bidder's Qualifications. This form is used to document bidder's qualifications.

4. RUS Form 282, Rev. 11-53, Subcontract. This form is used for subcontracting.

5. RUS Form 458, Rev. 3-55, Materials Contract. This form is used to obtain generation plant material and equipment purchases not requiring acceptance tests at the project site.

Major Changes

The revisions to the listed contract forms include:

1. Eliminate unneeded forms. This includes merging the Form 181 into the Form 187, merging the Form 180 and 792c into the Form 238, merging the Form 201, 203, and 764 into the Form 830, and eliminating Forms 180, 181, 201, 203, 764 and 792c. We are also eliminating infrequently used guidance forms (Forms 172, 173, 274, 282, and 458.)

2. Make forms suitable for "subject to" or "not subject to" RUS approval. This includes merging the Form 831 into the Form 830 and eliminating Form 831.

3. Make construction contract forms suitable for "labor only" or "labor and material." This includes merging the Form 792 into the Form 790 and eliminating Form 792.

4. Standardize tables and information pages and incorporate them as separate attachments. RUS is planning to publish the "Construction Assembly Units" pages as a separate bulletin. This would allow the borrower to include in its bid package only those construction assembly unit pages that are relevant to a particular project.

5. Maximize consistency among forms. This includes standardizing common provisions and terminology,

and adding a "Notice and Instructions to Bidders" to forms not having one. This also includes restructuring the Form 198, Equipment Contract, to a "proposal" and "acceptance" format (like the other forms), and adding certain provisions, such as insurance and protection to persons and property, applicable to work performed at the project site, such as technical assistance during installation.

6. Add a provision regarding assignment of the contract to RUS for security purposes.

7. Update and clarify certain contract provisions in the forms. This includes:

a. Clarify that the contractor (not the owner or engineer) is solely responsible for the means and methods of construction and for the supervision of the contractor's employees.

b. Delete the reference to a "Supervisor" appointed by RUS.

c. Delete the reference to the loan contract and owner's access to funding.

d. Delete the option for eliminating retainage after the contract is 50 percent complete.

e. Update the "Buy American" and "Civil Rights" requirements.

f. Eliminating gender specific terms such as him, his, and materialmen.

Comments

RUS published an Advanced Notice of Proposed Rulemaking in the **Federal Register** on September 16, 1998, at 63 FR 49503. Comments were received from two distribution borrowers and two power supply borrowers. RUS also published a Notice of Proposed Rulemaking in the **Federal Register** on July 2, 2002, at 67 FR 44396. Comments were received from one distribution borrower, one power supply borrower, and two engineering consultants. RUS reviewed and considered all comments. Several of the comments are addressed herein. Commenters requested that RUS:

• Add a liquidated damages clause to the Forms 198 and 200. This comment has been incorporated.

• Allow electronic reproduction for all or part of the forms. This comment has been incorporated. RUS has removed many of the tables contained in the forms and made them optional attachments which may be modified (electronically or otherwise) as needed. RUS is also allowing exact electronic reproduction of the contract forms. This change is also being made to 7 CFR 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.

• Modify the closeout and accounting requirements for certain types of contract forms. RUS has determined that it will not make this suggested change.

RUS believes that the existing requirements are a reasonable balance between ease of use and accountability.

- Include certification forms concerning lobbying and debarment. RUS has included a certification form for debarment. RUS has determined that a lobbying form is not needed in the contract forms.

- Eliminate the requirement to include owner furnished materials under the contractor's bond for certain contracts. RUS has determined that it will not make this suggested change. RUS believes that the existing bonding requirements are necessary for protection of the borrower's and the government's financial interests.

- Add or modify a number of contract provisions to define or clarify the contractor's obligations. RUS has modified the contract provisions as appropriate to clarify the contractor's obligations.

- Clarify the nature of Form 830. Form 830 is called a "Lump Sum" contract, but the document refers to a "Proposal on Unit Basis" (Article I, Section 5). This comment has been incorporated by revising the subtitle of the Form 830 to read "Project Construction."

- Expand the "Discrepancy in Unit Prices" section (Notice & Instructions to Bidders, Item 15) to include multiplication as well as addition. This comment has been incorporated.

- Add a statement regarding new equipment and materials to Article I, Section 4. This comment has been incorporated and we have combined Sections 2 and 4.

- Add a provision that observation or testing by the Owner does not relieve the Bidder of its obligations under the contract. This comment has been incorporated.

- Add a provision to the warranty concerning warranty of work repaired or replaced under the warranty. This comment has been incorporated.

- Change payment terms to allow the Owner to determine the number of elapsed days before payment is due to the Bidder. In the interest of fairness to both parties to the contract, RUS has determined that it will not make this suggested change.

- Revise payment terms on "1 Lot" contracts. Since projects of this type are not common under this standard form of contract, RUS has determined that it will not make this suggested change.

- Add "grazing land" to the protection provision concerning "cultivated lands." This comment has been incorporated.

- Add a provision for contract termination for Owner's convenience. In

the interest of fairness to both parties to the contract, RUS has determined that it will not make this suggested change.

- Add a provision concerning Owner's right to duplicate and use drawings and other technical data furnished under the contract. Since the contract form does not specifically request drawings and other technical data, RUS has determined that it will not make this suggested change. If the Owner or Engineer requests such information, details concerning the Owner's right to duplicate and use such information should be included in such a request.

- In Form 257, Buildings, remove references to "unit prices" and "de-energize." This comment has been incorporated.

- In Form 198, Equipment Contract, revise the "Due Diligence" provision concerning knowledge of the site. This comment has been incorporated.

- RUS should specify when contracts require RUS approval. RUS has determined that it will not make this suggested change. The Owner is to insert this information into the standard form.

- Eliminate the requirement for bid bonds for small projects. RUS has determined that it will not make this suggested change. A bid bond (or check) is equally important for a small project as for a large project.

- Remove the cost of "Owner Furnished Materials" from "labor only" contracts. RUS has determined that it will not make this suggested change. However, if a borrower can demonstrate a reasonable benefit and adequate material control, we will consider allowing a borrower to remove the cost of owner furnished material from the cost of the contract on a case-by-case basis.

- Eliminate the requirement to include "Owner Furnished Materials" under the Contractor's Bond. RUS has determined that it will not make this suggested change. Since the contractor has control of the Owner Furnished Materials, it is important to have the protection of the Contractor's Bond for the full amount of the contract.

- Include a provision to prevent the Contractor for changing the Owner for salvaged materials reused in the line construction. RUS has determined that it will not make this suggested change. With proper material control, this should not be an issue.

- Clarify whether the Form 830, Project Construction Contract, will include a provision concerning salvage and reuse of the Owner's material. RUS has determined that it will not make this suggested change. With proper

material control, this should not be an issue.

- Clarify whether a Form 254, Construction Inventory, is needed with a Form 830, Project Construction Contract. Form 254 is required for a Form 830 contract by § 1726.403.

- Include a provision for assessing damages for late performance by the contractor in the Form 790, Non-Site Specific Construction Contract. RUS has determined that it will not make this suggested change. The borrower has adequate remedies under the law.

- Clarify the remedy for Contractor's failure to pay material suppliers and subcontractors. RUS has determined that it will not make this suggested change. The borrower has adequate remedies under the law.

- Change the engineer's certification in Form 187, Certificate of Completion, from "in all respects in strict compliance" to "in compliance" with the contract. This comment has been incorporated.

- Allow an "Hourly Labor and Equipment Rate Schedule" in the contract forms. RUS has determined that it will not make this suggested change.

- Add a "Third Year" option to the Form 790, Non-Site Specific Construction Contract. This comment has been incorporated by changing the form to allow the borrower to insert an option of up to four years.

- Correct various editorial and reference inconsistencies. This comment has been incorporated by making these corrections as applicable.

One commenter suggested that by eliminating Form 274, Bidder's Qualifications, RUS is not encouraging prequalification of bidders. On the contrary, RUS requires prequalification of bidders (see 7 CFR 1726.23) for all contracts. RUS is eliminating the Form 274 because RUS believes that the substance of the bidder's qualification is more important than the form used. Borrowers and engineers may use whatever form or format they feel is appropriate for obtaining bidder's qualifications.

Other Changes

In addition to the modifications of the contract forms and the associated changes in 7 CFR 1726, RUS is making several other minor changes and corrections to 7 CFR 1726. For example, § 1726.125(b), which covers approval by RUS of plans and specifications for generating facilities, is being removed because this topic is now covered in 7 CFR 1724, Electric Engineering, Architectural Services and Design Policies and Procedures. Since some of the electric program contract forms are

also used in the RUS telecommunications program, RUS is changing the list of forms in 7 CFR 1755. RUS is also removing the reference to year 2000 compliance since this is no longer relevant.

List of Subjects

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1755

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

■ For reasons set forth in the preamble, RUS amends 7 CFR chapter XVII as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

■ 1. The authority citation for part 1724 continues to read as follows:

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

Subpart F—RUS Contract Forms

■ 2. Amend § 1724.71 by revising paragraph (b) to read as follows:

§ 1724.71 Borrower contractual obligations.

* * * * *

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

* * * * *

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

- 3. The authority citation for part 1726 continues to read as follows:

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

Subpart A—General

- 4. Revise § 1726.20 to read as follows:

§ 1726.20 Standards and specifications.

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

- 5. Revise § 1726.24 by revising paragraph (b)(1) to read as follows:

§ 1726.24 Standard forms of contracts for borrowers.

* * * * *

(b) * * *

(1) *Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

* * * * *

- 6. Revise § 1726.25 to read as follows:

§ 1726.25 Subcontracts.

Subcontracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

- 7. Amend § 1726.27 by revising paragraphs (a) and (b) to read as follows:

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for \$1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for \$1 million or less.

* * * * *

Subpart B—Distribution Facilities

- 8. Amend § 1726.50 by revising paragraph (a)(2) to read as follows:

§ 1726.50 Distribution line materials and equipment.

(a) * * *

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than \$500,000 and for all materials.

* * * * *

- 9. Amend § 1726.51 by revising paragraph (a) to read as follows:

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use RUS Form 790, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of \$250,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for all other distribution line construction.

* * * * *

Subpart C—Substation and Transmission Facilities

- 10. Amend § 1726.76 by revising paragraph (a)(2) to read as follows:

§ 1726.76 Substation and transmission line materials and equipment.

(a) * * *

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than \$500,000 and for all materials.

* * * * *

- 11. Amend § 1726.77 by revising paragraph (a) to read as follows:

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for construction of

substations, except for minor modifications or improvements.

* * * * *

Subpart D—Generation Facilities

- 12. Amend § 1726.125 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subpart F—General Plant

- 13. Amend § 1726.175 by revising paragraph (a) to read as follows:

§ 1726.175 General plant materials.

* * * * *

(a) *Contract forms.* The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order.

* * * * *

Subpart H—Modifications to RUS Standard Contract Forms

- 14. Amend § 1726.250 by revising it to read as follows:

§ 1726.250 General.

RUS provides standard forms of contract for the procurement of materials, equipment, and construction and for contract amendments and various related forms for use by RUS borrowers. See § 1726.304 for a listing of these forms and how to obtain them. The standard forms of contract shall be used by the borrowers in accordance with the provisions of this part. RUS will give prior approval to certain modifications to these forms without changing the applicable requirements for RUS approval. Such approved modifications are set forth in this subpart. These are the only modifications given prior RUS approval.

- 15. Amend § 1726.252 revising paragraph (a) and removing paragraph (d) to read as follows:

§ 1726.252 Prior approved contract modification related to liability for special and consequential damages.

* * * * *

(a) Insert new paragraphs in the "Notice and Instructions to Bidders" as follows:

"Proposals are invited on the basis of alternative Liability Clause Numbers 1 and 2. The Owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

Liability Clause Number 1. This will include unmodified all of the standard

terms and conditions of the form of contract furnished by the Owner and attached hereto.

Liability Clause Number 2. This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the Owner and attached hereto:

‘‘Except for the Bidder’s willful delay or refusal to perform the contract in accordance with its terms, the Bidder’s liability to the Owner for special or consequential damages on account of breach of this contract shall not exceed in total an amount equal to ____ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive of the contract price.]’’

* * * * *

§ 1726.254 [Removed and Reserved]

- 16. Remove and reserve § 1726.254.
- 17. Amend § 1726.255 by revising paragraph (c) and removing paragraphs (d) and (e) to read as follows:

§ 1726.255 Prior approved contract modification related to indemnification.

* * * * *

(c) If the alternative indemnification provision in paragraph (a) or (b) of this section is chosen by the borrower, the language of paragraph (a) or (b) of this section would be inserted in lieu of paragraph (i) of the section indicated in the RUS standard construction contract forms as follows:

- (1) RUS Form 198, Equipment Contract, article IV, section 1(d).
- (2) RUS Form 200, Construction Contract—Generating, article IV, section 1(d).
- (3) RUS Form 257, Contract to Construct Buildings, article IV, section 1(d).
- (4) RUS Form 786, Electric System Communications and Control Equipment Contract, article IV, section 1(d).
- (5) RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, article IV, section 1(g).
- (6) RUS Form 830, Electric System Construction Contract—Project Construction, article IV, section 1(g).

Subpart I—RUS Standard Forms

- 18. Amend § 1726.301 by revising paragraph (b) to read as follows:

§ 1726.301 Borrower contractual obligations.

* * * * *

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed

standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

* * * * *

- 19. Amend § 1726.302 by revising paragraph (b) to read as follows:

§ 1726.302 Notice and publication of listed contract forms.

* * * * *

(b) *Availability.* Listed standard forms of contract are available from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington DC 20250-1522, telephone number (202) 720-8674. The listed standard forms of contract are also available on the RUS Web site at: <http://www.usda.gov/rus/electric/forms/index.htm>. The listed standard forms of contract can be found in § 1724.304(c), List of Required Contract Forms.

- 20. Amend § 1726.304 by revising paragraph (c) and (d) to read as follows:

§ 1726.304 List of electric program standard contract forms.

* * * * *

(c) List of required contract forms.

- (1) RUS Form 168b, Rev. 2-04, Contractor’s Bond. This form is used to obtain a surety bond and is used with RUS Forms 200, 257, 786, 790, and 830.
- (2) RUS Form 168c, Rev. 2-04, Contractor’s Bond (less than \$1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor’s surety has accepted a Small Business Administration guarantee.

(3) RUS Form 187, Rev. 2-04, Certificate of Completion, Contract Construction. This form is used for the closeout of RUS Forms 200, 257, 786, and 830.

(4) RUS Form 198, Rev. 2-04, Equipment Contract. This form is used for equipment purchases.

(5) RUS Form 200, Rev. 2-04, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment.

(6) RUS Form 213, Rev. 2-04, Certificate (“Buy American”). This form

is used to document compliance with the “Buy American” requirement.

(7) RUS Form 224, Rev. 2-04, Waiver and Release of Lien. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(8) RUS Form 231, Rev. 2-04, Certificate of Contractor. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(9) RUS Form 238, Rev. 2-04, Construction or Equipment Contract Amendment. This form is used for amendments.

(10) RUS Form 254, Rev. 2-04, Construction Inventory. This form is used for the closeout of RUS Form 830. Minor electronic modifications are acceptable for RUS Form 254.

(11) RUS Form 257, Rev. 2-04, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction.

(12) RUS Form 307, Rev. 2-04, Bid Bond. This form is used to obtain a bid bond.

(13) RUS Form 786, Rev. 2-04, Electric System Communications and Control Equipment Contract (including installation). This form is used for delivery and installation of equipment for system communications.

(14) RUS Form 790, Rev. 2-04, Electric System Construction Contract—Non-Site Specific Construction. This form is used for limited distribution construction accounted for under work order procedure.

(15) RUS Form 792b, Rev. 2-04, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of RUS Form 790.

(16) RUS Form 830, Rev. 2-04, Electric System Construction Contract—Project Construction. This form is used for distribution and transmission line project construction.

(d) List of guidance contract forms. RUS does not currently publish any guidance forms for electric borrowers.

Subpart J—Contract Closeout

- 21. Amend § 1726.401 by removing the introductory text.
- 22. Amend § 1726.403 by revising the introductory text and paragraph (c) to read as follows:

§ 1726.403 Project construction contract closeout.

This section is applicable to contracts executed on RUS Forms 200, 257, 786, and 830.

* * * * *

(c) *Closeout documents.* (1) Upon satisfactory completion of construction (including all changes and corrections

by the contractor), the borrower (acting through its architect or engineer, if applicable) will obtain executed copies of the following documents:

- (i) RUS Form 187, Certificate of Completion, Contract Construction.
- (ii) RUS Form 213, "Buy American" certificate.
- (iii) RUS Form 224, Waiver and Release of Lien, from each manufacturer, supplier, and contractor which has furnished material or services or both in connection with the construction.

(iv) RUS Form 231, Certificate of Contractor.

(v) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c, construction change orders, and amendments for contracts executed on RUS Form 830.

(vi) Certification by the project architect or engineer in accordance with § 1726.403(a), if applicable.

(vii) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable RUS requirements regarding retention of records.

(ii) For contracts subject to RUS approval, the borrower will submit the following closeout documents for RUS approval (through the GFR except for generation projects):

(A) RUS Form 187, Certificate of Completion, Contract Construction.

(B) RUS Form 231, Certificate of Contractor.

(C) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c and construction change orders, for contracts executed on RUS Form 830.

(iii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval. The borrower will send one copy of RUS Form 187 to RUS for information prior to or in conjunction with the applicable RUS Form 219, Inventory of Work Orders. The remaining closeout documents need not be sent to RUS unless specifically requested by RUS.

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■ 23. Amend § 1726.404 by revising the introductory text to read as follows:

§ 1726.404 Non-site specific construction contract closeout.

This section is applicable to contracts executed on RUS Form 790.

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

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

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

■ 25. Amend § 1755.30 by revising paragraphs (c)(4) through (c)(8), (c)(12) through (c)(14), (c)(17), and (c)(24) to read as follows:

§ 1755.30 List of telecommunications standard contract forms.

* * * * *

(c) * * *

(4) RUS Form 168b, issued 2-04, Contractor's Bond.

(5) RUS Form 168c, issued 2-04, Contractor's Bond.

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

(7) RUS Form 187, issued 2-04, Certificate of Completion, Contract Construction.

(8) RUS Form 213, issued 2-04, Certificate (Buy American).

* * * * *

(12) RUS Form 224, issued 2-04, Waiver and Release of Lien.

(13) RUS Form 231, issued 2-04, Certificate of Contractor.

(14) RUS Form 238, issued 2-04, Construction or Equipment Contract Amendment.

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(17) RUS Form 257, issued 2-04, Contract to Construct Buildings.

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(24) RUS Form 307, issued 2-04, Bid Bond.

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Dated: January 30, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04-3115 Filed 2-12-04; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-11-AD; Amendment 39-13459; AD 2004-03-15]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-102, -103, -106, -201, -202 -301, -311, and -315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes, that currently requires a one-time inspection to detect chafing of electrical wires in the cable trough below the cabin floor; repair, if necessary; installation of additional tie-mounts and tie-wraps; and application of sealant to rivet heads. This amendment requires adding an additional modification of the electrical wires in certain sections. The actions specified by this AD are intended to prevent chafing of electrical wires, which could result in an uncommanded shutdown of an engine during flight. This action is intended to address the identified unsafe condition.

DATES: Effective March 19, 2004.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of March 19, 2004.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 27, 1998 (63 FR 50501), September 22, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York, New York 11581; telephone (516) 228-7306; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99-21-09, amendment 39-11352 (64 FR 54199, October 6, 1999), which is applicable to certain Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes, was published in the **Federal Register** on October 20, 2003