

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1755

RIN 0572-AB40

#### Telecommunications Policies on Specifications, Acceptable Materials, and Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, proposes amending certain regulations on telecommunications policies to include requirements presently contained in RUS Bulletin 345-3, "Acceptance of Standards, Specifications, Equipment, Contract Forms, Manual Sections, Drawing, Materials and Equipment for the Telephone Program." This proposed rule would establish and codify provisions for RUS acceptance and Technical acceptance of materials used in telecommunications systems. This rule also proposes to integrate the existing regulatory sections on field trials into the procedure for product acceptance and inclusion in this codification, as well as to clarify and reorganize the field trial section. This rule would affect borrowers that are parties to planning and construction of telecommunication facilities with RUS funds and manufacturers and contractors providing products to RUS borrowers.

**DATES:** Written comments must be received by RUS or must carry a postmark or equivalent no later than October 4, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Agency Web Site:* <http://www.usda.gov/rus/index2/Comments.htm>. Follow the instructions for submitting comments.

- *E-mail:* [RUSComments@usda.gov](mailto:RUSComments@usda.gov). Include in the subject line of the message "Telecommunications Policies Specifications, Acceptable Materials, and Standard Contract Forms."

- *Mail:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Services, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522.

- *Hand Delivery/Courier:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Services, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, DC 20250-1522.

*Instructions:* All submissions received must include that agency name and the subject heading "Telecommunications Policies Specifications, Acceptable Materials, and Standard Contract Forms." All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to <http://www.usda.gov/rus/index2/Comments.htm>, including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

Norberto Esteves, Chair, Technical Standards Committee "A" (Telecommunications), Advanced Services Division, Rural Development Utility Programs, U.S. Department of Agriculture, STOP 1550, Washington, DC 20250-1550, telephone number 202-720-0699, fax number 202-205-2924, e-mail [norberto.esteves@usda.gov](mailto:norberto.esteves@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in 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 the rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

#### Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The standard RUS telecommunications loan documents contain provisions on procurement of products and construction of telecommunications facilities purchased with loan funds. This ensures that the telecommunications systems financed with loan funds are adequate to serve the purposes for which they are to be constructed and that loan funds are adequately secured. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

#### Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this proposed rule are cleared under control number 0572-0059 pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

#### Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring the preparation the preparation of a Federalism Assessment.

#### Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Program under No. 10.851, Rural Telephone

Loans and Loan Guarantees; No. 10.852, Rural Telephone Bank Loans, and No. 10.857, Rural Broadband Access 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. Telephone: (202) 512-1800.

#### Executive Order 12372

This proposed 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 titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034), advising that RUS and RTB loans and loan guarantees are excluded from the scope of Executive Order 12372.

#### Unfunded Mandates

This proposed rule contains no Federal Mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Chapter 25)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### National Environmental Policy Act Certification

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

#### Background

This proposed rule codifies RUS product acceptance requirements presently contained in RUS Bulletin 345-3, "Acceptance of Standards, Specifications, Equipment Contract Forms, Manual Sections, Drawings, Materials and Equipment for the Telephone Program," (hereinafter "RUS Bulletin 345-3.") RUS Bulletin 345-3 outlines the requirements for determining acceptability of certain products for use on telecommunications systems found in Information Publication 344-2, "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers" (hereinafter "List of Acceptable Materials.") As a result, RUS Bulletin 345-3 will be rescinded with the effective date of the final rule.

This action also proposes the establishment of a policy to provide RUS product acceptances for no more than three (3) years, necessitating the periodic requalification of each RUS accepted product pursuant to proposed § 1755.22. A new section setting-out the procedure for withdrawal of RUS product acceptance has also been added.

This proposed regulation will be divided into the subparts shown in the index. The previous Field Trial section, now relocated to subpart F, has been revised to clarify that successful completion of a field trial does not imply automatic RUS acceptance of a product, but that the Technical Standards Committees "A" and "B" and the RUS Administrator shall determine the acceptance of such products upon consideration of applications submitted by the manufacturer requesting such consideration. Finally, § 1755.97 of this part has been redesignated as § 1755.65.

#### Revisions to RUS Forms

RUS Forms 399a, "Supplemental Agreement to Equipment Contract for Field Trial (Secondary—Delivery, Installation, Operations)" has been revised to streamline the field trial procedure and to make it more user-friendly. RUS has also revised Article IV(4) of RUS Form 515, "Telecommunications System Construction Contract (Labor and Materials)," amending the insurance coverage certification to read: [check box] When checked by the Owner, with respect to the insurance required by 7 CFR 1788.48 (b) and (c), the Contractor shall include as additional insured, the Owner, and its personnel, and the Engineer, and its personnel. The added costs shall be included in the bid price. RUS Form 773, "Miscellaneous Construction Work and Maintenance Service Contract," has been revised as well to require the use of RUS Form 744, "Certification Contractor and Indemnity Agreement." Draft copies of the proposed revisions are available through the RUS Telecommunications forms Web site at <http://www.usda.gov/rus/telecom/publications/forms.htm>.

#### Rescission of RUS Forms

RUS Form 257a, "Contractor's Bond," RUS Form 397f, "Contractor's Bond (Special Telephone Equipment)," and RUS Form 525a, "Contractor's Bond (Central Office Equipment)" have been replaced by RUS Form 168b, "Contractor's Bond" or RUS Form 168c, "Contractor's Bond" (less than \$1 million) which are to be used for any RUS funded construction.

Addenda to following RUS Forms: RUS Form 397, "Special Equipment Contract (Including Installation)" (hereinafter "RUS Form 397,") RUS Form 525, "Central Office Equipment Contract (Including Installation)" (hereinafter "RUS Form 525,") and RUS Form 545, "Central Office Equipment Contract (Not Including Installation)" would no longer be needed, as the proposed revisions of the forms would incorporate provisions for them.

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

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

For the reasons set out in the preamble, RUS proposes to amend part 1755, chapter XVII of title 7 of the Code of Federal Regulations, as follows:

#### PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

1. 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.*

2. The heading of part 1755 is revised as set out above.

3. The table of contents for §§ 1755.1 through 1755.97 is revised to read as follows:

##### Subpart A—General

Sec.  
1755.1 General.  
1755.2 Definitions applicable to § 1755.1 through § 1755.97.  
1755.3 List of Acceptable Materials.  
1755.4–1755.9 [Reserved]

##### Subpart B—RUS Technical Committees

1755.10 Technical Standards Committee A (Telecommunications).  
1755.11 Technical Standards Committee B (Telecommunications).  
1755.12–1755.19 [Reserved]

##### Subpart C—RUS Acceptance of Products

1755.20 General.  
1755.21 Products used in special situations.  
1755.22 Requalification.  
1755.23 Product design changes.  
1755.24 Address or name change.  
1755.25–1755.29 [Reserved]

##### Subpart D—Rescission of RUS Product Acceptable Materials

1755.30 General.  
1755.31 Procedure for Rescission of RUS Product Acceptance.  
1755.32–1755.39 [Reserved]

##### Subpart E—Appeals

1755.40 Appeals to Committee B.  
1755.41 Appeals to the Administrator.  
1755.42–1755.49 [Reserved]

**Subpart F—Field Trials**

- 1755.50 General.
- 1755.51 Qualifications for Borrower's participation.
- 1755.52 Procurement.
- 1755.53 Field trial contract approval.
- 1755.54 Field trial agreement.
- 1755.55 Procedures for establishing field trials for the various product categories.
- 1755.56 Warranty.
- 1755.57–1755.59 [Reserved]

**Subpart G—Standards, Specifications, Contract Forms, Bulletins, Drawings, and Products for the Telecommunications Program**

- 1755.60 RUS standard contract forms and specifications.
- 1755.61 Borrower contractual obligations.
- 1755.62 Notice and publication of listed standard contract forms and specifications.
- 1755.63 Promulgation of new or revised standard contract forms.
- 1755.64 List of RUS standard contract forms.
- 1755.65 List of RUS specifications incorporated by reference.
- 1755.66–1755.97 [Reserved]
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4. Subpart A, consisting of §§ 1755.1 through 1755.9 is established, and §§ 1755.1 through 1755.9 are revised to read as follows:

**Subpart A—General****§ 1755.1 General.**

(a) The standard RUS telecommunications loan documents contain provisions on procurement of products and construction of telecommunications facilities purchased with RUS and Rural Telephone Bank (RTB) loan funds. This part implements certain provisions of the loan documents and ensures that borrowers' telecommunications systems financed with RUS loan funds are adequate to serve the purposes for which they are to be constructed and that RUS loan funds are adequately secured. Products and construction financed with loan RUS and RTB funds must meet the specifications established by this part. In addition, this part lists the RUS bulletins containing the specifications required for telecommunications facilities. This part also sets forth policies and procedures to determine specifications, standard contract forms, drawings, and products for the telecommunications program.

(b) This part applies to products financed with RUS and RTB loan funds.

(1) Subpart A of this part covers general requirements, definitions, and the RUS acceptance of materials for use on RUS borrowers' telecommunications systems, and for the approval of RUS telecommunications standards,

specifications, drawings, and technical guidance issuances.

(2) Subpart B of this part covers the RUS technical committees which have the authority to accept or reject all proposals of standards, specifications, drawings, and products for use in RUS-financed construction.

(3) Subpart C of this part covers the RUS requirements for the acceptance of products.

(4) Subpart D of this part covers the withdrawal of RUS acceptance of products.

(5) Subpart E of this part covers appeal of a decision made by the RUS technical committees.

(6) Subpart F of this part covers the RUS requirements for field trials.

(7) Subpart G lists the specifications, standard contract forms, bulletins, drawings, and products to be used in construction financed with RUS and/or RTB Loans.

(c) Borrowers may use RUS financing only for RUS accepted products, unless, pursuant to § 1755.21 or § 1755.52 of this part, they obtain written prior RUS approval to purchase a product not included therein.

(d) Borrowers may not finance used or secondhand products with RUS financing, unless otherwise approved by RUS in writing.

(e) All products financed with loan funds are subject to the "Buy American" requirement of section 401 of the Rural Electrification Act of 1935 as amended (7 U.S.C. 901 *et seq.*) (hereinafter the "RE Act.")

**§ 1755.2 Definitions.**

For the purpose of this part:

*Accept; Acceptance*—RUS action of providing the manufacturer of a product with a letter which indicates that RUS has determined that the manufacturer's product meets RUS requirements in accordance with this part, including the technical specifications that RUS has established for the product.

*Administrator*—The Administrator of RUS or an RUS staff employee to whom authority has been delegated.

*Borrower*—Any organization that has an outstanding RUS and/or RTB Loan, or that is seeking such financing. *See* 7 CFR part 1735.

*"Buy American" requirement*—The RE Act's "Buy American" provision (June 21, 1938, Ch. 554, Title IV, section 401, 52 Stat. 818), as amended.

*Central office equipment*—Equipment category which includes central office dial equipment, remote switching equipment, and all other products associated with switching equipment.

*Committee A*—Technical Standards Committee "A" (Telecommunications). *See* § 1755.10.

*Committee B*—Technical Standards Committee "B" (Telecommunications). *See* § 1755.11.

*Contract forms*—RUS requires the use of RUS standard contracts for construction, procurement, engineering services, and architectural services financed with RUS and/or RTB Loans.

*Domestic product*—For purposes of this part, a domestic product is one which is manufactured in the United States or in an eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in an eligible country. An "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the market of that country, as determined by the United States Trade Representative.

*Electronic transmission equipment*—Equipment category which includes line concentrators, subscriber carrier, radio systems, fiber optic lightwave systems, multiplex equipment, mobile and fixed wireless systems, and other products of electronic equipment associated with transmission of telecommunications signals.

*List of Acceptable Materials*—The latest edition of RUS Informational Publication 344–2, "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers." This document contains a convenient listing of the domestic products which have been determined to be acceptable by the RUS Technical Committees and the Administrator. The List of Acceptable Materials is available on the Internet at <http://www.usda.gov/rus/telecom/materials/lstomat.htm>.

*Listed product*—Product included in the List of Acceptable Materials.

*Loan*—Any telecommunications loan made or guaranteed by RUS and/or the Rural Telephone Bank. *See* 7 CFR part 1735, subpart C.

*Loan documents*—The documents covering a loan made by RUS, including the loan contract, note and mortgage or other security documents between the borrower and RUS.

*Non-Domestic product*—Any product other than a Domestic product.

*Product*—An item of manufactured material or assembled components, complete and capable of performing an intended practical purpose.

*Sole-source negotiation*—Any form of purchasing or contracting other than sealed competitive bidding with only one manufacturer or supplier.

*Specifications*—Standards pertaining to certain types of products or

construction which must be met to qualify for RUS loan funds. When appropriate, a specification may set forth the procedure to determine whether a particular standard has been satisfied.

*Sponsor*—A manufacturer or its authorized representative seeking to have a product considered for RUS Acceptance.

*Technical acceptance*—A letter of acceptance granted to a Sponsor of a Non-Domestic product which has been determined by RUS to meet RUS technical requirements and which complies with the Buy American exception when the Non-Domestic bid is lower than the lowest domestic bid by at least six percent of the cost of the material content of the Non-Domestic bid.

*Telecommunications*—Any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of any kind, by wire, fiber, radio, light, or other visual or electromagnetic means, including all telephone lines, facilities, or systems used in the rendition of such service; but shall not be deemed to mean message telegram service or community antenna television system services or broadcasting facilities other than those intended exclusively for educational purposes, or radio broadcasting services or facilities.

#### **§ 1755.3 List of Acceptable Materials.**

All domestic products that RUS determines are acceptable for RUS financing are, for borrower convenience purposes, included in the RUS List of Acceptable Materials. A product is considered acceptable for use on RUS-financed projects, if in RUS' opinion, the product meets the respective specification or other requirements of this part. If the product is not covered by a specification in this part, the product will need to meet the specifications of a national standardizing organization, as determined by RUS, which sets such standards.

(a) RUS Technical Standards Committee A (Telecommunications) (Committee A) determines whether a product fulfills the requirements of the applicable specifications and is otherwise acceptable for use on an RUS-financed project.

(b) RUS' past, present, or future acceptance for inclusion of a product in the List of Acceptable Materials does NOT:

(1) Constitute an RUS warranty of the product; or

(2) Relieve the manufacturer of any responsibility for the product, including conformity to guarantees, warranties, specifications, or other provisions of the sale contract.

(c) RUS includes products in the List of Acceptable Materials under specific categories. Committee A determines whether to establish or eliminate categories from the List of Acceptable Materials. RUS may list the product in a generic category until such a time as a specific category is created by RUS.

(d) RUS may require that a product undergo a field trial before RUS determines acceptability of the product. RUS authorization of a field trial and the successful completion of a field trial shall not be construed as an automatic RUS acceptance of a product for inclusion in the List of Acceptable Materials. See subpart F of this part.

#### **§§ 1755.4–1755.9 [Reserved]**

5. Subpart B, consisting of §§ 1755.10 through 1755.19, is established, and §§ 1755.10 through 1755.19 are revised to read as follows:

#### **Subpart B—RUS Technical Committees**

##### **§ 1755.10 Technical Standards Committee A (Telecommunications).**

(a) Committee A reviews all proposals relating to acceptance of products. Acceptance by the committee constitutes RUS acceptance of the proposal. A Sponsor may appeal an adverse decision made by Committee A to Committee B. See subpart E of this part.

(b) Committee A approves RUS construction practices and RUS technical issuances, such as RUS technical bulletins and technical drawings. This approval constitutes RUS approval of such documents.

(c) Committee A reviews and approves all new contract forms and specifications, or proposed changes thereto, which shall then be published in the **Federal Register**.

##### **§ 1755.11 Technical Standards Committee B (Telecommunications).**

Committee B reviews all cases referred to it by Committee A and all appeals by a Sponsor from an adverse decision by Committee A. See Subpart E of this part.

#### **§§ 1755.12–1755.19 [Reserved]**

6. Subpart C, consisting of §§ 1755.20 through 1755.29, is established, and §§ 1755.20 through 1755.29 are revised to read as follows:

#### **Subpart C—RUS Acceptance of Products**

##### **§ 1755.20 General.**

Sponsors may begin the process for a determination of whether a product is acceptable by submitting a written request to the Chair of Committee A.

(a) For product acceptance, Committee A shall require a certification stating that the Sponsor will make a good faith effort to sell the product to RUS borrowers during the listing period.

(b) Domestic Products and Non-Domestic Products accepted without condition may be used in all situations. Products accepted subject to certain conditions, however, such as limited use to certain areas or applications, will be accepted on a conditional basis with such conditions cited as a part of their listing.

(c) Non-Domestic Products accepted by Committee A for use on telecommunications systems of RUS Borrowers are subject to compliance with the Buy American requirements and shall not be listed in the List of Acceptable Materials, but shall instead appear on the RUS Telecommunications' List of Acceptable Materials web page for information purposes.

##### **§ 1755.21 Products used in special situations.**

(a) RUS may approve the use of products not accepted for use on RUS-financed projects on a case-by-case basis where:

(1) The List of Materials does not include similar products to the product proposed by the borrower;

(2) The products included in the List of Acceptable Materials are not reasonably available; or

(3) The Borrower's specific situation calls for a unique design.

(b) Borrowers desiring to use Loan funds for such products shall obtain RUS approval, in writing, prior to purchase.

##### **§ 1755.22 Requalification.**

RUS shall grant acceptance to Domestic Products and technical acceptance to Non-Domestic Products for a maximum period of three years, or less if indicated in the respective product specification. On or before the expiration indicated in the product specification, sponsors must thereafter apply for continued acceptance by submitting a written request. If no time to apply for requalification has been indicated in the specification, the Sponsor may apply at least 45 calendar days prior to expiration of the product

acceptance to allow RUS time for processing of the request. A product previously accepted by RUS may be requalified for continued acceptance if RUS receives a letter signed by a company official, certifying that:

(a) For Domestic Products, the product meets the "Buy American" requirement. If not, on request by the Sponsor, the product may be requalified for continued acceptance as a Non-Domestic Product;

(b) The product has not changed and is manufactured as originally accepted by RUS. If the product has changed, refer to § 1755.23 of this subpart;

(c) The Sponsor has made a good faith effort to sell the product to RUS Borrowers while its product was listed. The Sponsor shall provide on Committee A's request, any evidence, such as proof of sales, bidding activity, etc., demonstrating that such an effort has been made; and

(d) The Sponsor will continue to make a good faith effort to sell the product to RUS Borrowers.

#### § 1755.23 Product design changes.

All changes in design for products listed in the List of Acceptable Materials shall be promptly submitted to RUS for acceptance of the changes before these changes are implemented.

#### § 1755.24 Address or name change.

A manufacturer shall notify Committee A in writing of any change of name, address of the product's manufacturing site, or the company's corporate headquarters, no later than 60 days following the change.

#### §§ 1755.25–1755.29 [Reserved]

7. Subpart D, consisting of §§ 1755.30 through 1755.39, is established, and §§ 1755.30 through 1755.39 are revised to read as follows:

#### Subpart D—Rescission of RUS Product Acceptance

##### § 1755.30 General.

(a) Committee A shall initiate the procedure for withdrawal of a product's RUS acceptance (and a subsequent removal of a product from the List of Acceptable Materials) upon the following conditions:

(1) The product has not performed according to specification or has been misrepresented by the Sponsor to a Borrower and/or RUS;

(2) The manufacturer or authorized representative does not apply for requalification;

(3) The committee determines, upon consideration of the manufacturer's requalification submittal, that the manufacturer's product or

requalification submittal does not meet the minimum requirements for requalification listed in § 1755.22 of this part;

(4) RUS learns that the RUS accepted product received by RUS borrowers has a material change in design of the product, as determined by Committee A, which had not been previously accepted by Committee A;

(5) The manufacturer's submittal responding to RUS' request to certify an accepted product complies with revised specification requirements adopted by RUS indicates that the product does not meet revised specification requirements;

(6) Continued RUS acceptance of a product might immediately impair the RE Act purposes, endanger public health and safety, or undermine the security of RUS and/or RTB Loans; or

(b) Committee A may, in its discretion, initiate the procedure for withdrawal of RUS acceptance (and subsequent removal of a product from the List of Acceptable Materials) under the following conditions:

(1) The manufacturer fails to notify Committee A of a change in address, as required by § 1755.24 of this part;

(2) The manufacturer sells the company or the right to manufacture the product to another entity; or

(3) RUS is unable to contact the manufacturer; or

(4) RUS determines that the manufacturer no longer manufactures the product.

#### § 1755.31 Procedure for rescission of RUS product acceptance.

(a) The following procedure will be used to withdraw RUS acceptance of a product (and subsequent removal of the product from the List of Acceptable Materials):

(1) RUS shall inform the Sponsor in writing of the proposed withdrawal of RUS acceptance of a product (and subsequent removal of the product from the List of Materials,) providing the Sponsor with all available information relating to the proposed withdrawal of acceptance, unless the reason(s) for withholding such information is given, and

(2) The Sponsor has fourteen (14) calendar days after receipt of such notification to notify Committee A, in writing, of its intent to submit information relevant to Committee A's decision to withdraw acceptance of the product. The Sponsor shall submit such information within thirty (30) calendar days from the date the sponsor received RUS' notice of intent to withdraw RUS acceptance of the product. Notwithstanding the following deadlines, Committee A, in its

discretion, may make a decision after expiration of said deadlines.

(b) Upon request of the Sponsor, or on its own accord, Committee A may grant additional opportunity for presentation or consideration of relevant information; including, without limitation, a meeting between Committee A and the Sponsor at such time, place, and manner as Committee A may determine. In making this decision, Committee A shall consider, among other things, the best interest of RUS, its Borrowers, and the manufacturer; and

(c) If Committee A determines that removal of the product is appropriate, it may:

(1) Immediately withdraw RUS acceptance of the product (and subsequent removal from the List of Acceptable Materials);

(2) Establish conditions for the continued acceptance (and listing) of such product;

(3) Recommend a settlement which adequately protects the interest of RUS and/or the Federal government;

(4) Request further information to reach a decision; or

(5) Order the withdrawal of RUS acceptance of the product (and subsequent removal from the List of Acceptable Materials) within fourteen (14) days, which order shall be stayed if the Sponsor timely appeals to Committee B.

(d) Committee A shall consider all relevant information presented to it in determining removal of a product from the List of Acceptable Materials, and shall give written notice of its decision and the reasons therefor.

#### §§ 1755.32–1755.39 [Reserved]

8. Subpart E, consisting of §§ 1755.40 through 1755.49, is established, and §§ 1755.40 through 1755.49 are revised to read as follows:

#### Subpart E—Appeals

##### § 1755.40 Appeals to Committee B.

A Sponsor may appeal Committee A's decision to remove a product, in writing, to Committee B within fourteen (14) calendar days after receipt of notification of said decision. Committee B shall base its determination on the record developed by Committee A.

(a) If Committee B determines that withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Materials) is appropriate, Committee B may:

(1) Immediately withdraw RUS acceptance of the product (and subsequent removal of the product from the List of Acceptable Materials);

(2) Establish conditions for the continued RUS acceptance (and listing) of such product;

(3) Recommend a settlement which adequately protects the interest of RUS and/or the Federal government;

(4) Request further information to reach a decision; or

(5) Order the withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Materials) within fourteen (14) days, which order shall be stayed if the Sponsor timely appeals to the Administrator.

(b) Written notice of Committee B's decision and the reasons therefor shall be provided to the Sponsor.

(c) If Committee B determines that removal of a product is not appropriate, the product's listing shall be continued.

#### **§ 1755.41 Appeals to the Administrator.**

A Sponsor may appeal a Committee B's decision, in writing, to the Administrator of RUS within fourteen (14) calendar days after receipt of notification of said decision, specifying the reasons for such a request. The Administrator's determination shall be based on the record developed by Committee A and Committee B, should the Administrator choose to review decisions of the Committees; however, at the Administrator's discretion, the Administrator may decline to conduct such review, in which case the decision of the Committees will stand.

(a) The Administrator's determination may be based on any additional information provided; and

(b) If, after review, the Administrator determines that withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Materials) is appropriate, the Administrator may:

(1) Order the immediate withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Acceptable Materials);

(2) Establish conditions for the continued RUS acceptance (and listing) of such product; or

(3) Recommend a settlement which adequately protects the interest of RUS and/or the Federal government;

(c) Written notice of the Administrator's decision and the reasons therefor shall be provided to the Sponsor.

(d) If, after review, the Administrator determines that removal is not appropriate, the product's listing shall be continued.

#### **§§ 1755.42–1755.49 [Reserved]**

9. Subpart F, consisting of §§ 1755.50 through 1755.59, is established, and

§§ 1755.50 through 1755.59 are revised to read as follows:

### **Subpart F—Field Trials**

#### **§ 1755.50 General.**

RUS may, at its option, require a product to undergo one or more field trials when considering products for acceptance. RUS may also require a field trial when design changes of an accepted or Listed Product involve such major modifications that the product's suitability cannot be determined based on laboratory data. A field trial normally consists of limited field installations of the product in one or more closely monitored situations designed to determine, to RUS' satisfaction, the product's operational effectiveness. Both the manufacturer and Borrower are responsible for assuring that the field trial is carried out and that the required information on the product's performance is received by RUS in a timely manner.

(a) The use of products derived from new inventions or concepts untried within the telecommunications industry is defined as "an experiment" and shall be handled as a special case using procedures considered appropriate by RUS to meet the individual experiment.

(b) RUS may limit the quantity of new products installed on any field trial and may also limit the number of field trials for a given product to a number it considers needed to provide the necessary information.

(c) The test site for the field trial shall be, in RUS' opinion, readily accessible and provide the conditions, such as temperature extremes, high probability of lightning damage, etc., for which the product is being evaluated.

(d) An RUS specification, or a suitable industry specification acceptable to RUS, shall cover the product involved. The Sponsor is required to submit test data to show conformance with the applicable specification or standard. RUS may require additional testing.

(e) A field trial shall normally continue for a minimum of six months, or for a longer period if so determined by RUS, to obtain conclusive data that the product either fulfills all requirements or is unacceptable.

(f) Either the Borrower or Sponsor may terminate a field trial at any time, in accordance with their contractual agreement. Such termination shall constitute withdrawal of the product from consideration by RUS.

(g) RUS may terminate field trials based on its determination that the product is not performing satisfactorily, and that such performance may, in RUS'

opinion, cause service degradation or hazard to life or property.

#### **§ 1755.51 Qualifications for Borrower's participation.**

A Borrower may participate in a field trial only if, in RUS' opinion, the Borrower possesses:

(a) Adequate financial resources to ensure that no delays in any RUS funded project will result from lack of funds or difficulties which may result from an unsuccessful field trial. In the event the Sponsor fails to meet its financial obligations with respect to the field trial, the Borrower must be able to maintain or restore service;

(b) Qualified personnel to enable it to discharge its responsibilities;

(c) A record satisfactory to RUS for maintaining equipment and plant facilities and for providing RUS with information when requested; and

(d) Willingness to participate in the field trial and awareness of the effort and responsibility it entails.

#### **§ 1755.52 Procurement.**

Borrowers wishing to use RUS and/or RTB Loan funds for a product not included in the List of Acceptable Materials must contact RUS to find out if a field trial is required as a condition for product acceptance. If the product is already undergoing a field trial, RUS will inform the Borrower if RUS will approve another field trial. Generally, to be eligible for RUS financing, products required by RUS to undergo a field trial must be procured under the procedures set forth in 7 CFR part 1753. If a Borrower desires a product undergo a field trial on a Sole-Source Negotiation basis, it must obtain prior written approval from RUS before soliciting a quote, and shall follow the procedures set forth in this section instead of those in 7 CFR part 1753. RUS may allow the Borrower to negotiate with the Sponsor on a Sole-Source Negotiation basis if the product complies with the following conditions when compared to products currently available in the marketplace:

(a) The product significantly improves performance;

(b) The product has a broader application; and

(c) The product advances technology in rural telecommunications.

#### **§ 1755.53 Field trial contract approval.**

For contract approval RUS requires an executed RUS Form 399, "Supplemental Agreement to Equipment Contract for Field Trial," together with other required contract documents.

#### **§ 1755.54 Field trial agreement.**

RUS shall have received an executed RUS Form 399a, "RUS

Telecommunications Equipment Field Trial” (hereinafter “RUS Form 399a,”) between the Borrower and the Sponsor prior to approval of the contract covering the products to be used in the field trial.

(a) RUS may require that the Sponsor provide a plan, satisfactory to RUS, which maintains or restores service in the event that the product fails to meet established performance requirements. This plan shall be included in RUS Form 399a.

(b) Field trials shall be conducted in accordance with the instructions set forth in this subpart and with the agreement relating to the specific application, as indicated in RUS Form 399a.

(c) Both the Sponsor and the Borrower shall keep RUS informed of the status of a field trial. These reports shall provide complete information on the progress of the field trial and shall also include details of all problems or failures encountered during installation and subsequent operation. If these reports are not received in accordance with the requirements of RUS Form 399a, RUS may suspend advances of loan funds related to these products until satisfactory reports are received.

**§ 1755.55 Procedures for establishing field trials for the various product categories.**

The procedures for establishing field trials are:

(a) *Electronic transmission equipment.* The procedure set forth in subpart H of 7 CFR part 1753 shall be followed, except that RUS Form 397 shall be used in all purchases of electronic equipment for field trials.

(b) *Central office equipment.* The procedure set forth in subpart E of 7 CFR part 1753, shall be followed, except that RUS Form 525 shall be used to purchase switching equipment for field trials.

(c) *Other types of products.* All products not covered in paragraphs (a) and (b) of this section, including protection, outside plant, and all other products, shall be handled as described in 7 CFR part 1753, except that the Borrower’s purchase order form shall be used for purchasing products in these categories.

**§ 1755.56 Warranty.**

Warranty for products undergoing field trials shall be provided as follows:

(a) *For all products except electronic and central office equipment.* Suppliers and manufacturers must furnish warranties, satisfactory to RUS, which cover the failure of a product in its field trial.

(1) Terms of such warranties must be at least equivalent to the standard

warranty included in RUS Form 515, “Telephone System Construction Contract.”

(2) In lieu of a warranty, products may be furnished to RUS Borrowers on a reduced or no cost basis. Terms of such arrangements are subject to RUS approval and must be fully covered in the field trial proposals forwarded by Borrowers to the RUS for review and approval.

(b) *For electronic and central office equipment.* Suppliers and manufacturers are to provide warranties as set forth in RUS Form 397 for electronic equipment and in RUS Form 525 for central office equipment.

**§§ 1755.57–1755.59 [Reserved]**

10. Subpart G, consisting of §§ 1755.60 through 1755.64, is established, and §§ 1755.60 through 1755.64 are revised to read as follows:

**Subpart G—Standards, Specifications, Contract Forms, Bulletins, Drawings, and Products for the Telecommunications Program**

**§ 1755.60 RUS standard contract forms and specifications.**

This section implements provisions of the RUS loan documents and prescribes the procedures that RUS follows in promulgating standard contract forms that Borrowers are required to use and meet, respectively. The standard loan agreement between RUS and its Borrowers provides that, in accordance with applicable RUS regulations, Borrowers must:

(a) Use standard contract forms promulgated by RUS for construction, procurement, engineering services, and architectural services financed by an RUS and/or RTB Loan. These standard contract forms are identified in § 1755.64(c) of this part. Title 7 CFR part 1753 prescribes when and how Borrowers must use these standard contract forms.

(b) Use RUS and/or RTB Loan funds only for materials, equipment, and construction that meet the specifications promulgated by RUS. RUS may establish its own specifications or may utilize, to the greatest extent possible, standards of national standardizing organizations, such as the American National Standards Institute (ANSI), National Electrical Safety Code (NESC), etc. RUS telecommunications specifications that are approved by the Director of the Federal Register for incorporation by reference (IBR) therein are listed in § 1755.65 of this part.

**§ 1755.61 Borrower contractual obligations.**

(a) *Loan documents.* As a condition of an RUS and/or RTB Loan, Borrowers are required to enter into RUS loan agreements pursuant to which the Borrowers agree to use and comply with:

(1) *Standard contract forms.* RUS standard contract forms for construction, procurement, engineering services, and architectural services identified in the List of telecommunications standard contract forms under § 1755.64(c) of this part.

(i) If a Borrower is required under 7 CFR part 1753 to use a listed contract form, it shall use the form available from RUS, such as a hardcopy format or an OMB-approved electronic format. Except as permitted by paragraph (a)(1)(ii) of this section, the forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved in writing by RUS. Any modifications approved by RUS must be clearly indicated.

(ii) The Borrower may use an exact electronic reproduction of a contract form if such reproduction is submitted to RUS for prior approval and the following certification by the Borrower is included:

“I (insert name), certify that the attached (insert contract form name), between (insert name of parties), dated (insert date), is an exact reproduction of RUS Form (insert contract form number), dated (insert date of RUS form).”

(Signature)

(Title)

(Employer’s Address)

(iii) Where a Borrower has entered into a standard contract form required by this part, no changes to the terms of the contract may be made by amendment, waiver, or otherwise, without the prior written consent of RUS.

(2) *RUS-promulgated specifications.* RUS specifications for materials, equipment, and construction.

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

(c) *Violations.* A failure on the part of the Borrower to use standard contract forms and RUS Specifications for materials, equipment, and construction as prescribed in 7 CFR parts 1753 and 1755 is a violation of the terms of the

loan documents, and the RUS and/or RTB may exercise any and all remedies available under the terms therein.

**§ 1755.62 Notice and publication of listed standard contract forms and specifications.**

(a) *Notice.* Upon initiating a loan agreement with RUS, Borrowers and their consulting engineers will be given citation to all applicable regulations and all listed specifications and contract forms. Manufacturers seeking RUS acceptance of their products are also provided citation to the appropriate specifications applicable to their products. Thereafter, new or revised standard contract forms and specifications promulgated by RUS, including RUS-approved exceptions and alternatives, will be sent by regular or electronic mail to Borrowers, consulting engineers, and manufacturers, as appropriate.

(b) *Availability.* Standard contract forms and specifications are published by RUS. Interested parties may obtain these from the U.S. Department of Agriculture, Rural Utilities Services, Program Development and Regulatory Analysis, Stop 1522, Washington, DC 20250-1522, telephone number (202) 720-8674. Industry specifications incorporated by reference by RUS are listed in § 1755.65 of this part.

**§ 1755.63 Promulgation of new or revised standard contract forms.**

RUS may, from time to time, promulgate new standard contract forms, or revise or eliminate existing standard contract forms. In so doing, RUS shall publish a notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1755.64(c) of this part. The amendment may change the existing identification of a listed standard contract form, such as the issuance date, or identify an entirely new required standard contract form. The notice of rulemaking will describe the new standard contract form, or any substantive change in the one, as the case may be. The standard contract form, or relevant portions thereof, may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. RUS shall send, by regular or electronic mail, a copy of each such **Federal Register** document to all Borrowers, manufacturers and other interested parties.

**§ 1755.64 Lists of RUS standard contract forms.**

(a) *General.* By the terms of the RUS loan documents, an RUS Borrower is

required to use telecommunications standard contract forms issued by RUS, as well as use materials, equipment, and construction which meet specifications issued by RUS, or industry specifications incorporated by reference. Paragraph (c) of this section lists RUS telecommunications program standard contract forms for procurement, construction, engineering services, and architectural services.

(b) *Version of standard contract form.* Where required by 7 CFR part 1753 in connection with an RUS and/or RTB Loan, the Borrower shall use the version of the standard form contract identified in paragraph (c) which was issued as of the date the Borrower released the plans and specifications to solicit bids or price quotes on an RUS financed project.

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

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

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

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

(4) RUS Form 168b, issued 02-04, "Contractor's Bond."

(5) RUS Form 168c, issued 02-04, "Contractor's Bond."

(6) RUS Form 181, issued 02-95, "Certification of Completion, Contract Construction Buildings."

(7) RUS Form 181a, issued 03-66, "Certification of Completion (Force Account Construction)."

(8) RUS Form 187, issued 02-04, "Certification of Completion, Contract Construction."

(9) RUS Form 213, issued 02-04, "Certificate (Buy American)."

(10) RUS Form 216, issued 07-67, "Construction Change Order."

(11) RUS Form 217, issued 03-97, "Post-loan Engineering Services Contract-Telecommunications Systems."

(12) RUS Form 220, issued 06-98, "Architectural Services Contract."

(13) RUS Form 224, issued 02-04, "Waiver and Release of Lien."

(14) RUS Form 231, issued 02-04, "Certificate of Contractor."

(15) RUS Form 238, issued 02-04, "Construction or Equipment Contract Amendment."

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

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

(18) RUS Form 257, issued 02-04, "Contract to Construct Buildings."

(19) RUS Form 270, issued 07-70, "Equal Opportunity Addendum."

(20) RUS Form 271, issued 07-70, "Notice to Contractors & Sellers."

(21) RUS Form 274, issued 06-81, "Bidder's Qualifications."

(22) RUS Form 276, issued 02-59, "Bidder's Qualifications for Buried Plant Construction."

(23) RUS Form 281, issued 05-61, "Tabulation of Materials Furnished by Borrower."

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

(25) RUS Form 284, issued 04-72, "Final Statement of Cost for Architectural Service and Certificate of Architect."

(26) RUS Form 307, issued 02-04, "Bid Bond."

(27) RUS Form 375, issued 01-03, "Interim Financing."

(28) RUS Form 390, issued 01-03, "Software License Agreement."

(29) RUS Form 396, issued 03-64, "Certificate of Completion-Special Equipment Contract (Including Installation)."

(30) RUS Form 396a, issued 03-64, "Certificate of Completion-Special Equipment Contract (Not Including Installation)."

(31) RUS Form 397, issued 08-00, "Special Equipment Contract (Including Installation)."

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

(33) RUS Form 399, issued 08-82, "Supplement Agreement to Equipment Contract for Field Trial."

(34) RUS Form 399a, issued [EFFECTIVE DATE OF FINAL RULE], "Telecommunications Equipment Field Trial."

(35) RUS Form 506, issued 12-96, "Statement of Engineering Fee-Telecommunications."

(36) RUS Form 515, [EFFECTIVE DATE OF FINAL RULE], "Telecommunications System Construction Contract (Labor and Materials)."

(37) RUS Form 517, issued 09-64, Results of Acceptance Tests.

(38) RUS Form 525, issued 07-94, "Central Office Equipment Contract (Including Installation)."

(39) RUS Form 526, issued 08-66, "Construction Contract Amendment."

(40) RUS Form 527, issued 03-71, "Statement of Construction, Telephone System-Outside Plant."

(41) RUS Form 545, issued 11-99, "Central Office Equipment Contract (Not Including Installation)."

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

(43) RUS Form 724a, issued 04-61, "Final Inventory, Telephone

Construction-Telephone Construction Contract (Labor and Materials), Columns 1–8.”

(44) RUS Form 724b, issued 03–61, “Final Inventory, Telephone Construction-Telephone Construction Contract (Labor and Materials), Columns 9–14.”

(45) RUS Form 744, issued 02–62, “Certificate of Contractor and Indemnity Agreement.”

(46) RUS Form 752, issued 04–66, “Certificate of Completion Central Office Equipment Contract.”

(47) RUS Form 752a, issued 05–66, “Certificate of Completion Central Office Equipment-Not Including Installation.”

(48) RUS Form 754, issued 06–66, “Certificate of Completion and Certificate of Contractor and Indemnity Agreement.”

(49) RUS Form 756, issued 01–03, “Contract Closeout Certification.”

(50) RUS Form 771, issued 10–75, “Summary of Work Orders (Inspected by RUS Field Engineers.)”

(51) RUS Form 771a, issued 10–75, “Summary of Work Orders (Inspected by Licensed Engineer or Borrower’s Staff Engineer.)”

(52) RUS Form 773, issued [EFFECTIVE DATE OF FINAL RULE], “Miscellaneous Construction Work and Maintenance Services Contract.”

(53) RUS Form 787, issued 03–95, “Supplement A to Construction Contract.”

(54) RUS Form 817, issued 06–60, “Final Inventory, Telephone Force Account Construction.”

(55) RUS Form 817a, issued 06–60, “Final Inventory, Telephone Force Account Construction, Columns 1–8.”

(56) RUS Form 817b, issued 06–60, “Final Inventory, Telephone Force Account Construction, Columns 9–14.”

(57) RUS Form 835, issued 03–66, “Pre-loan Engineering Service Contract, Telephone System Design.”

#### § 1755.97 [Redesignated]

11. Redesignate § 1755.97 as § 1755.65.

Dated: April 28, 2005.

**Curtis M. Anderson,**

*Acting Administrator, Rural Utilities Service.*  
[FR Doc. 05–13945 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 04–088–1]

RIN 0579–ZA01

#### Animal Welfare; Standards for Ferrets

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of petition and request for comments.

**SUMMARY:** We are notifying the public that the Animal and Plant Health Inspection Service has received a petition requesting that specific standards be promulgated for the humane handling, care, treatment, and transportation of domestic ferrets. We are soliciting comments from the public regarding the petition, and whether we should continue to regulate the handling, care, treatment, and transportation of ferrets covered by the Animal Welfare Act under the general standards in the regulations, or promulgate specific standards for ferrets. We are also requesting comments regarding what should be included in any such standards.

**DATES:** We will consider all comments that we receive on or before October 4, 2005.

**ADDRESSES:** You may submit comments by either of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the “View Open APHIS Dockets” link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–088–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–088–1.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you,

please call (202) 690–2817 before coming.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The definition of “animal” in the AWA is, in part: “\* \* \* any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet.” This definition excludes “(1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock and poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.” (7 U.S.C. 2132(g).)

Within the United States Department of Agriculture, responsibility for enforcing the AWA has been delegated to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for enforcing the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1 and 2, and 9 CFR part 3 contains standards for the humane handling, care, treatment, and transportation of animals covered by the AWA. Currently, part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for