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JUN 12 2000

MEMORANDUM FOR DISTRIBUTION

Subj: COMPROLLER GENERAL ACCESS ON CERTAIN "OTHER
TRANSACTION" AGREEMENTS FOR PROTOTYPE PROJECTS

Encl: (1) OUSD A&T memo dtd June 7, 2000

Enclosure (1) is forwarded for your information and
implementation, as appropriate.

Edward A. Callaway
Edward A. Callaway
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OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

JUNE 7, 2000

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION & BUSINESS MANAGEMENT,
ASN(RDA)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT), ASA(ALT)/SAAL-ZP

SUBJECT: Comptroller General Access on Certain "Other Transaction"
Agreements for Prototype Projects

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, as amended, provides authority to the Department to enter into transactions pursuant to 10 U.S.C. 2371 for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects.

Section 801 of the National Defense Authorization Act for Fiscal Year 2000 establishes a requirement that an "other transaction" agreement for a prototype project that provides for payments in a total amount in excess of \$5,000,000 include a clause that provides Comptroller General access to records.

An Interim Rule to enact this law was coordinated with your agency and published in the Federal Register on June 5, 2000. This memorandum is issued to advise that the Interim Rule has been published (attached) and will be effective 30 days after publication or July 5, 2000. The Interim Rule must be used when developing solicitations issued on or after this date. The Interim Rule may be used to develop solicitations that will be issued or agreements awarded prior to this date.

Deidre A. Lee
Director, Defense Procurement

Attachment
As stated



ENCLOSURE(1)

§ 914.16 [Amended]

3. Section 914.16 is amended by removing and reserving paragraph (ff). [FR Doc. 00-13972 Filed 6-2-00; 8:45 am] BILLING CODE 4310-05-P

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 3**

RIN 0790-AG79

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: This interim rule requires inclusion of a clause as required by law, providing for Comptroller General access to records in transactions other than contracts, grants or cooperative agreements for prototype projects that provide for total payments in excess of \$5,000,000. This rule is published in the Federal Register for public comment because it directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of, any such transaction.

DATES: The interim rule will be effective July 5, 2000. Comments on the interim rule should be submitted in writing to the address specified below on or before August 4, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule to: Office of the Director, Defense Procurement, Attn: Ms. Teresa Brooks, PDUSD(A&T)/DP(DSPS), 3060 Defense Pentagon, Washington, DC 20301-3060. Telefax (703) 693-9616.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695-4258.

SUPPLEMENTARY INFORMATION:**Background and Purpose**

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160, as amended by section 804 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104-201 and section 241 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105-261, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than

contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects.

Section 801 of the National Defense Authorization Act for Fiscal Year 2000 establishes a requirement that an "other transaction" agreement for a prototype project that provides for payments in a total amount in excess of \$5,000,000 include a clause that provides Comptroller General access to records.

To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects. The requirement for Comptroller General access on "other transactions" for prototype projects that provide for payments that exceed \$5,000,000 is the first statutory requirement mandating conditions that must be included in an "other transactions" agreement. The content of this rule may also be included in a future DoD issuance.

Regulatory Evaluation*Executive Order 12866, "Regulatory Planning and Review"*

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Pub. L. 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule requires only that the Comptroller General be provided access to records of certain projects. It does not require additional record keeping or other significant expense by project participants.

*Pub. L. 96-511, "Paperwork Reduction Act of 1995" (44 U.S.C. *et seq.*)*

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 3

Grant programs.

Accordingly, Title 32, Chapter 1 is amended to add part 3 to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS**Sec.**

- 3.1 Purpose.
- 3.2 Applicability.
- 3.3 Definitions.
- 3.4 Policy.

Authority: Section 801, Pub. L. 106-65.

§ 3.1 Purpose.

This part implements section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). It establishes the requirement for the inclusion of a clause in transactions other than contracts, grants or cooperative agreements for prototype projects awarded under authority of 10 U.S.C. 2371 that provides Comptroller General access to records when payments total an amount in excess of \$5,000,000.

§ 3.2 Applicability.

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371. Such transactions are commonly referred to as "other transaction" agreements and are hereafter referred to as agreements.

§ 3.3 Definitions.

Contracting activity. An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements designated by the director of a defense agency that has been delegated contracting authority through its agency charter.

Head of the contracting activity. The official who has overall responsibility for managing the contracting activity.

§ 3.4 Policy.

(a) Except as provided in paragraph (b) of this section, a clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of \$5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or subordinate element of a party or entity,

that has not entered into any other contract, grant, cooperative agreement or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(c) The head of the contracting activity (HCA) that is carrying out the agreement may waive the applicability of the Comptroller General access requirement if the HCA determines it would not be in the public interest to apply the requirement to the agreement. The waiver will be effective with respect to the agreement only if the HCA transmits a notification of the waiver to the Committees on Armed Services of the Senate and the House of Representatives, the Comptroller General, and the Director, Defense Procurement before entering into the agreement. The notification must include the rationale for the determination.

(d) The HCA must notify the Director, Defense Procurement of situations where there is evidence that the Comptroller General Access requirement caused companies to refuse to participate or otherwise restricted the Department's access to companies that typically do not do business with the Department.

(e) In no case will the requirement to examine records under the clause referenced in paragraph (a) of this section apply to an agreement where more than three years have passed after final payment is made by the government under such an agreement.

(f) The clause referenced in paragraph (a) of this section must provide for the following:

(1) The Comptroller General of the General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the agreement or any entity that participates in the performance of this agreement that directly pertain to, and involve transactions relating to, the agreement.

(2) Excepted from the Comptroller General Access requirement is any party to this agreement or any entity that participates in the performance of the agreement, or any subordinate element of such party or entity, that has not entered into any other contract, grant, cooperative agreement, or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(3) This clause shall not be construed to require any party or entity, or any subordinate element of such party or entity, that participates in the performance of the agreement, to create

or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(4) The Comptroller General shall have access to the records described in this clause until three years after the date the final payment is made by the United States under this agreement.

(5) The recipient of the agreement shall flow down this provision to any entity that participates in the performance of the agreement.

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00-13521 Filed 6-2-00; 8:45 am]

BILLING CODE 5001-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103-1b; FRL-6701-8]

Approval and Promulgation of Implementation Plans; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving sulfur dioxide redesignation requests submitted by the State of Ohio on March 20, 2000, for Coshocton, Gallia, and Lorain Counties. This request was first submitted on October 26, 1995. Ohio subsequently provided supplemental material to EPA in a letter dated September 14, 1999. On March 20, 2000, Ohio submitted final requests to redesignate Coshocton, Gallia, and Lorain Counties to attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO₂).

EPA is also approving the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS for at least 10 years, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is approving state-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric—Conesville Plant; in Gallia County: Ohio Valley Electric Company—Kyger Creek Plant and Ohio Power—Gavin Plant; and in Lorain County: CEI—Avon Lake Plant, Ohio Edison—Edgewater Plant, U.S. Steel—Lorain Plant, and B.F.

Goodrich Company—Lorain County Plant.

EPA is also approving other minor revisions in the state's rules for these three Counties.

On November 23, 1999, EPA received one comment on the proposal to redesignate Coshocton, Gallia, and Lorain Counties. American Electric Power (AEP) encouraged EPA to take final action to approve the redesignation.

DATES: This rule is effective on July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886-6701.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used we mean EPA.

This supplemental information section is organized as follows:

- I. General Information
 1. What action is EPA taking today?
 2. Why is EPA taking this action?
 3. What is the background for this action?
- II. How Does the Proposed Submittal Compare to the Final Submittal?
- III. Public Comments and EPA Response
What comments did EPA receive?
- IV. Background on Ohio Submittal
 1. What information did Ohio submit, and what were its requests?
 2. What guidance documents did EPA use in this rulemaking to evaluate Ohio's request?
- V. State Implementation Plan (SIP)
 1. How do state-adopted emission limits compare to the FIP limits?
 2. What are the sources and emission limits that will be affected by EPA's action?
- VI. Maintenance Plan
 1. How does the maintenance plan apply in Coshocton, Gallia, and Lorain Counties?
 2. What are the maintenance plan reduction requirements?
- VII. Redesignation Evaluation
 1. What five criteria did EPA use to review the redesignation requests?
 2. Are these five criteria satisfied for Coshocton, Gallia, and Lorain Counties?
- VIII. Final Rulemaking Action
- IX. Administrative Requirements
 - A. Executive Order 12866
 - B. Executive Order 13045
 - C. Executive Order 13084
 - D. Executive Order 13132
 - E. Regulatory Flexibility
 - F. Unfunded Mandates
 - G. Submission To Congress and The Comptroller General
 - H. National Technology Transfer and Advancement Act
 - I. Petitions for judicial Review

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving SO₂ redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and

Subj: COMPTROLLER GENERAL ACCESS ON CERTAIN "OTHER
TRANSACTION" AGREEMENTS FOR PROTOTYPE PROJECTS

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