

factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in the brackets in the heading of this regulation. Received objections may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective July 26, 1977 except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d)).)

Dated: July 16, 1977.

WILLIAM F. RANDOLPH,
Acting Associate
Commissioner for Compliance.

[FR Doc. 77-17958 Filed 6-23-77; 8:45 am]

SUBCHAPTER B—FOODS FOR HUMAN CONSUMPTION

[Docket No. 76F-0463]

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

Specific Usage Additives; Chemicals Used in Washing Or to Assist in the Lye Peeling of Fruits and Vegetables

Correction

In FR Doc. 77-16228 appearing at page 29856 in the issue for Friday, June 10, 1977, the table in § 173.315(a) (3) should have read as set forth below:

Substances	Limitations
Alpha-alkyl (C ₁₂ -C ₁₈)-omega-hydroxypoly (oxyethylene); average number of moles of ethylene oxide is 9.	Not to exceed 3 ppm
Linear undecylbenzenesulfonic acid.	Do.
Dialkanolamide produced by condensing 1 mole of methyl laurate with 1.05 moles of diethanolamine.	Not to exceed 2 ppm
Triethanolamine	Do.
Ethylene glycol monobutyl ether.	Not to exceed 1 ppm
Oleic acid conforming with § 172.860 of this chapter.	Do.
Tetrapotassium pyrophosphate.	Not to exceed 0.3 ppm
Monoethanolamine	Do.
Ethylene dichloride	Not to exceed 0.2 ppm
Tetrasodium ethylenediaminetetraacetate.	Not to exceed 0.1 ppm

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Oxytetracycline Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application submitted by Phillips Roxane, Inc., for use of an injectable drug in cattle and swine for the treatment of certain diseases due to oxytetracycline-susceptible organisms.

EFFECTIVE DATE: June 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Myron C. Rosenberg, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1788.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (47-278V) filed by Phillips Roxane, Inc., 2621 North Belt Highway, P.O. Box 999, St. Joseph, MO 64502, proposing certain additional limitations of use and a change in excipients for oxytetracycline hydrochloride injection used in the treatment of certain diseases due to oxytetracycline-susceptible organisms in beef cattle, nonlactating dairy cattle, and swine.

In accordance with § 514.11(e) (2) (ii) (21 CFR 514.11(e) (2) (ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, between the working hours of 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 522 is amended in § 522.1662a by adding new paragraph (b) (3) (ii) (c) to read as follows:

§ 522.1662a Oxytetracycline hydrochloride injection.

(b) * * *

(c) Discontinue use 26 days prior to slaughter.

Effective date: This amendment becomes effective June 24, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))).

Dated: June 14, 1977.

C. D. VAN HOUWELING,
Director, Bureau of
Veterinary Medicine.

[FR Doc. 77-17848 Filed 6-23-77; 8:45 am]

SUBCHAPTER G—COSMETICS

[Docket No. 75N-0005]

PART 701—COSMETIC LABELING

Hypoallergenic Cosmetic Products; Judicial Stay of Effective Date

Correction

In FR Doc. 77-16957 appearing at page 30361 in the issue for Tuesday, June 14, 1977, in the middle column, the 5th line of the third full paragraph, the date now reading "June 5, 1976" should have read "June 6, 1975".

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER J—FISCAL AND FINANCIAL AFFAIRS

PART 114—PROCEDURES FOR DEPOSITING FUNDS TO THE CREDIT OF 14X6140-DEPOSITS OF PROCEEDS OF LANDS WITHDRAWN FOR NATIVE SELECTION, BIA

Establishment of a New Part

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rulemaking.

SUMMARY: This document establishes policy for the deposit, investment, and payment of monies in the authorized escrow account and delegates to the Commissioner of Indian Affairs the responsibility of setting up the account, preparing guidelines for administering the account, and making investments and disbursements of the monies in the account.

EFFECTIVE DATE: June 24, 1977.

ADDRESSES: None.

FOR FURTHER INFORMATION CONTACT:

Mr. A. W. Bartlett, P.O. Box 127, Bureau of Indian Affairs, Albuquerque, New Mexico, 87103; telephone 505-474-3496.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior, by issuance of Order No. 2997, served notice that there has been established an escrow account entitled "Deposits of Proceeds of Lands Withdrawn for Native Selection, Bureau of Indian Affairs" in the Treasury of the United States for the deposit of proceeds derived from contracts, leases, permits, rights-of-way, or easements pertaining to affected lands, or resources in affected lands withdrawn for Native selection pursuant to the Alaska Native Claims Settlement Act. All Departments or Agencies of the Federal Government and State of Alaska receiving such proceeds are required to deposit proceeds to the account and advise the Commissioner of the deposit in accordance with this rule.

Notice of proposal and the comment period is found to be unnecessary due to the limited applicability of this regulation and its categorization as interpretation of Section 2 of the Act of January 2, 1976 (89 Stat. 1145).

The new Part 114 shall become effective on June 24, 1977 and shall remain in effect until it is amended, revoked, or superseded. However, in the absence of the foregoing, the provisions of this order shall terminate January 3, 1979.

The authority for the Commissioner to issue these regulations is contained in Section 2 of the Act of January 2, 1976 (89 Stat. 1145), Escrow Account, and (5 U.S.C. 301), and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

Subchapter J, of Chapter I of Title 25 of the Code of Federal Regulations is amended by adding a new Part 114, to read as follows:

Sec.
114.1 Purpose
114.2 Proceeds Received by Federal Agencies
114.3 Proceeds Received by the State of Alaska

Authority: 89 Stat. 1145.

§ 114.1 Purpose.

The purpose of the regulations in this part is to describe the procedures to be used by all Departments and Agencies of the Federal Government and the State of Alaska for the deposit of proceeds derived from contracts, leases, permits, and rights-of-way or easements pertaining to affected lands or resources in affected lands withdrawn for Native selection pursuant to the Alaska Native Claims Settlement Act.

§ 114.2 Proceeds received by Federal agencies.

(a) Direct Deposits.

(1) Agency will prepare Deposit Ticket (SF 215), using Agency Accounting Station Code 14-20-0650.

(2) In Block (6) Fund Symbol 14X6140 will be inserted as well as the following: Credit to Bureau of Indian Affairs, Branch of Finance and Accounting, P.O. Box 127, Albuquerque, New Mexico 87103.

(3) Memorandum copy and confirmed copy of Deposit Ticket will be mailed to above address, immediately upon completion and confirmation.

(4) Agency will provide information (lease, contract or other identification) which will permit depositing agency to identify deposit with particular plot of land at time distribution of the funds is to be made. This information can be shown in Block (6) if space permits, or on an attached listing.

(b) Periodic Deposits.

(1) In some circumstances, collection from Withdrawn Lands will be in such small amounts and such frequency as to be administratively burdensome to make individual deposits to the fund, or collections may be mixed with collections to be credited to other funds. In such instances depositing agencies may initially deposit the collections to their own suspense accounts. Such deposits will then be transferred to Fund 14X6140 no less frequently than monthly. The "Pay to" side of the SF 1081 will be completed as follows:

Department, Interior.
Bureau, Indian Affairs.
Agency Station Symbol, 14-20-0650.
Address, Albuquerque, NM 87103.

Appropriation or Fund Symbol, 14X6140.

and will be supported by sufficient detail to permit future identification by depositing agency. An advance copy of the SF 1081, with supporting documentation will be forwarded to the BIA at Albuquerque immediately.

(2) Agencies not using the SF 1081 procedures will issue a check made payable to the Treasurer of the United States, and forward it to:

Juneau Area Office, Bureau of Indian Affairs,
P.O. Box 8000—B, Juneau, Alaska 99802.

accompanied by a listing in sufficient detail to permit the collecting agency to identify the collections with each parcel of land at the time distribution of the funds is to be made.

§ 114.3 Proceeds received by the State of Alaska.

The State agency responsible for making collections will deposit the proceeds to the credit of the State of Alaska. A check will then be issued, payable to the Treasurer of the United States, and will be forwarded to the Juneau Area Office, Bureau of Indian Affairs, accompanied by a detailed listing providing information which will permit identification of the funds with each particular parcel of land at the time distribution of the funds is to be made. The Juneau Area Office will deposit all such receipts to the credit of Fund Symbol 14X6140, forwarding the memorandum copy to the Branch of Finance and Accounting immediately, together with a copy of the detail provided by the State of Alaska.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of
Indian Affairs.

[FR Doc. 77-18021 Filed 6-23-77; 8:45 am]

Title 36—Parks, Forest, and Public Property

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 200—ORGANIZATION, FUNCTIONS, AND PROCEDURES

Subpart A—Organization

ORGANIZATIONAL CHANGES AND CORRECTIONS

AGENCY: Forest Service, USDA.

ACTION: Final rule (Organization Statement).

SUMMARY: The organizational listing of the Forest Service is updated to reflect a current listing of land management units and new addresses. This is required to be published in the FEDERAL REGISTER by The Administrative Procedures Act.

DATES: The effective date for the new address for both the Northeastern Station and Northeastern Area in § 200.2 is October 1, 1977. The listing is otherwise effective on June 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Thomas R. Jones, Administrative Management Staff, Forest Service,

USDA, P.O. Box 2417, Washington, D.C. 20013, 202-447-4077.

Part 200 of Title 36 of the Code of Federal Regulations is amended as follows:

1. The National Forest System listing in § 200.1, paragraph (c) (2), is updated as follows:

§ 200.1 Central organization.

(c) Deputy Chiefs. * * *

(2) National Forest System. * * *

- 154 Proclaimed or designated National Forests
- 19 National Grasslands
- 29 Purchase Units
- 17 Land Utilization Projects
- 25 Research and Experimental Areas
- 41 Other areas

2. The addresses for two Forest and Range Experiment Stations and one State and Private Forestry Area in § 200.2, paragraph (d), are changed as follows:

§ 200.2 Field organization.

(d) Field Addresses. * * *

North Central—Polwell Avenue, St. Paul, MN 55108.
Northeastern—370 Reed Road, Broomall, PA 19008.

Director, Northeastern Area, 370 Reed Road, Broomall, PA 19008.

(81 Stat. 54 (5 U.S.C. 552).)

JOHN R. MCGUIRE,
Chief, Forest Service.

JUNE 20, 1977.

[FR Doc. 77-18036 Filed 6-23-77; 8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 4—DEPARTMENT OF AGRICULTURE

PART 4-2—PROCUREMENT BY FORMAL ADVERTISING

Miscellaneous Amendments

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule amends the Agriculture Procurement Regulations by updating the procedures for evaluating bids containing minor informalities, deleting section which had instructed Departmental agencies to submit questions involving award of contracts directly to GAO rather than through the Office of Operations (PGAMS), revising section on erroneous awards, based on findings of the Comptroller General, and making various editorial revisions and organizational name changes.

EFFECTIVE DATE: June 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Douglas I. Metzger, Procurement, Grants and Agreements Management Staff, Office of Operations, United States Department of Agriculture.

Washington, D.C. 20250, 202-447-7527.

SUPPLEMENTARY INFORMATION: This amendment involves matters relating to agency management and contracting and, while not subject by law to the notice and public procedure requirements for rule making under 5 U.S.C. 553, is subject to the Secretary's Statement of Policy (36 FR 13804). The amendment corrects or clarifies existing policy. No useful purpose would be served by public participation, and it is found upon good cause, in accordance with the Secretary's Policy Statement, that notice and other public procedures with respect to the amendment are impracticable and unnecessary.

1. The Table of Contents of Part 4-2 is amended by deleting § 4-2.450, Informalities of substance.

2. Section 4-2.404-2, paragraphs (a) and (b), are revised to read as follows:

§ 4-2.404-2 Rejection of individual bids.

(a) *Multiple bids.* Multiple bids are two or more bids submitted by one individual on behalf of two or more companies or submitted by two or more affiliated companies. Multiple bids may be accepted, provided, acceptance would not give one bidder an unfair advantage or would otherwise prejudice the interests of the Government. If acceptance of multiple bids would be prejudicial to the Government or to other bidders they must be rejected. Multiple bids are most likely to occur where different divisions of the same company or a parent company and its subsidiary submit bids under the same invitation, each responding to separate copies of the invitation sent to them, and each unaware that their affiliated company or division is also submitting a bid. An individual may also have legitimate reasons for submitting bids on behalf of two or more companies which that individual owns or controls. This could be a situation where partial awards are permitted under the invitation and it is hoped that an award will be made to each of the companies for such amount of work that each company could capably perform.

(b) *Alternate bids.* An alternate bid is one that contains an offer to perform work or furnish supplies not meeting the minimum requirements of the advertised specifications and must be rejected. A bid is not necessarily an alternate bid merely because a bidder designates it as such. Many times, bidders will submit more than one bid price based on differing qualities of materials, all or some of which may meet the advertised specifications. A low bid meeting the advertised specifications, whether or not it is designated by the bidder as an "alternate" bid, may be accepted.

3. Section 4-2.405 is revised to read as follows:

§ 4-2.405 Minor informalities or irregularities in bids.

(a) *Bids not on Government forms.* Bids not on Government forms may be accepted provided (1) the language of the bid clearly indicates that it is in re-

sponse to the advertised invitation for bids, (2) that which is offered is in accordance with the advertised specifications, and (3) no right is reserved by the bidder which would limit his liability to a greater extent than was provided in the invitation for bids. When such a bid is accepted the complete invitation for bids, in blank, shall be attached to the accepted bid and made a part of the contract.

(b) *Failure to acknowledge receipt of amendment.* The general rule as to the effect of a bidder's failure to acknowledge an amendment to an invitation for bids is that when the amendment affects, in other than a trivial or negligible manner, the price, quantity, or quality of the procurement, the bidder's failure to acknowledge the amendment in compliance with the terms of the invitation or amendment cannot be waived. The basis for this rule is the principle that the acceptance of a bid which disregards a material provision of an invitation would be prejudicial to other bidders. As clarification of a bid after opening is not permitted, a bidder's working papers cannot be used to show that an amendment to an invitation was received and considered and thereby act as a retroactive acknowledgment of the amendment.

(1) *Failure to acknowledge receipt of an amendment to an invitation for bids* may be waived in circumstances where the effect of the amendment is trivial or negligible in terms of price in relation to the overall scope of the contract and the difference between the two low bid prices. In determining whether the effect of an amendment is trivial or negligible to permit a waiver, the contracting officer shall use the Government's price estimate of the amendment and not a cost value cited by the bidder seeking the waiver. To do so would give the bidder the option to either become eligible for award or avoid award by citing smaller or larger cost values.

(2) *Wage determinations.* Failure to acknowledge an amendment to an invitation for bids incorporating a wage determination may not be waived as a minor informality since the amendment affects the price of the bid, even though the bidder's wages in the region may be greater than those contained in the wage determination.

(c) *Questionable cases as to whether acceptance of a bid as submitted will result in a contract binding on the bidder* should be referred to the Office of General Counsel for determination.

§ 4-2.407-1 [Amended]

4. Section 4-2.407-1, paragraph (a), is deleted and reserved.

5. Section 4-2.407-8 is revised to read as follows:

§ 4-2.407-8 Protests against award.

(a) *General.* (1) The written final decision to the protestor required by § 1-2.407-8(a)(1) of this title shall include a paragraph substantially as follows:

This decision shall be final and conclusive unless a further written notice of protest addressed to the Comptroller General of the

United States is mailed or otherwise furnished to the Contracting Officer or the Comptroller General. The protest, which may be in letter form, should refer to this decision and should include a statement of the reasons why the decision is considered to be erroneous.

(2) Where protests addressed to the Comptroller General are received, the contracting officer shall immediately forward the protest and documents required by § 1-2.407-8(a)(2) of this title to the Office of Operations through agency channels. The Office of Operations will transmit the protest to the General Accounting Office.

(b) *Protests after award.* Protests received after award will be handled in accordance with § 1-2.407-8 and § 4-2.407-8 of this title insofar as applicable. If the award was erroneously made, the instructions in § 4-2.407-53 shall be followed. Protests addressed to the Secretary or to the Department will be handled by the Office of Operations except as otherwise instructed in individual cases. If the contracting agency is in doubt as to proper resolution of a protest addressed to it, the advice of the Office of Operations or the Office of the General Counsel should be sought.

6. Section 4-2.407-53 is revised to read as follows:

§ 4-2.407-53 Erroneous award.

(a) If, through error, award is made to other than the low responsive and responsible offeror the resulting contract is illegal, and therefore, invalid.

(b) If the contractor did not contribute to the error and was not on direct notice before award that the procedures being followed were wrong, the contract cannot be cancelled but may be terminated for convenience.

(c) If the award was made contrary to statutory or regulatory requirements because of some action or statement by the contractor, or if the contractor was on direct notice that the procedures being followed violated such requirements, the award is illegal and can be cancelled. When the award is cancelled payment must be made on the "quantum meruit" basis, i.e., the contractor can only recover the costs he has already incurred (after award and before cancellation) to the extent that they confer a tangible benefit on the Government in the form of goods which the Government has received and retained. Pre-production costs (drafting, design, tooling and production planning, and tooling material) are generally not recoverable unless they meet the above criteria.

(d) The Office of Operations and Office of the General Counsel will render assistance to agencies when exceptional cases are involved.

(e) A report on the circumstances which led to making an erroneous award and a description of measures taken to prevent their recurrence shall be submitted to the Office of Operations through agency channels.

7. Sections 4-2.202-3(b), 4-2.406-1(a), 4-2.407-6, 4-2.407-50(d) and 4-2.407-51 are revised to read as follows:

§ 4-2.202-3 Place and method of delivery of supplies.

(b) *F.O.B. shipping point and F.O.B. destination.* In some instances it may be to the advantage of the Government to solicit prices on the basis of both F.O.B. shipping point and destination. Illustrations of cases when it would be in the best interest of the Government to solicit prices both ways are:

(1) When it is the custom of the industry to bid a shipping-point price only;

(2) When it is to the advantage of the Government to encourage competition by including bidders who will bid a shipping-point price only;

(3) When the cost of the transportation of the commodity is substantial in relation to the cost of the commodity, to bring into the competition the contractor who cannot or is unwilling to meet the large transportation cost.

(4) When the ultimate destination is known and when the quantity to be purchased is estimated to weigh 20,000 lbs. or more, except for those items that are of a fragile nature or are otherwise exceptionally susceptible to damage in transit, and

(5) When the ultimate destination is known and when the quantity to be purchased is estimated to weigh 100,000 lbs. or more, and is of a fragile nature or otherwise exceptionally susceptible to damage in transit.

§ 4-2.406-1 General.

(a) *General.* As a general rule a bidder cannot withdraw or change his bid after opening. Such rule does not apply where the bidder establishes, prior to award, that he made an honest mistake, since acceptance of a bid with the knowledge thereof does not constitute a valid binding contract. If the contracting officer has actual or constructive notice of an error in a bid after opening he shall request from the bidder a verification of the bid, calling attention to the suspected mistake and stating why he suspects a mistake has been made. If the bidder alleges a mistake, the matter shall be processed in accordance with this section. Such actions shall be taken prior to award. A representative of the bidder has authority to verify the bid if it appears that he is an employee of the bidder and is present at the bid opening in such capacity.

§ 4-2.407-6 Equal low bids.

Where the application of § 1-2.407-6 results in two or more bidders being equally eligible for award, the award shall be made by a drawing by lot limited to such bidders. In each such case, except as otherwise authorized by the Director, Office of Operations, the bidders involved shall be given an opportunity to be present at the drawing.

§ 4-2.407-50 Effect of acceptance period.

(d) *Awards where the acceptance period of the low bidder has expired.* Ordinarily, where a low bidder's acceptance period expires before acceptance and contract award, and regardless of the reason therefor, any award shall be to the next low bidder whose acceptance period is effective at the time. Such award is preferable, from the standpoint of preserving the integrity of the competitive bid system, to allowing the low bidder to renew his acceptance period after it has expired. It will be necessary to explain in the file in such instances the circumstances surrounding the failure to secure award prior to the expiration date, with a showing that award to the next low bidder was in the best interest of the Government, and that no appreciable savings could have been obtained by readvertising. Nonetheless, if award cannot otherwise be made without readvertising, when all bids have been improperly rejected or the acceptance period of all bids has expired, the low bidder may renew his acceptance period and thereby receive award. This procedure is preferred since readvertising generally should be avoided except for the most compelling reasons. (See § 1-2.404-1 of this title).

§ 4-2.407-51 Availability of funds.

Prior to award of the contract or any subsequent change therein, the contracting officer should have written assurance that sufficient funds are available within the current allotment and are reserved for the proposed action. However, where required by unusual circumstances, a contract may be executed with a condition therein that the liability of the Government for payment of all or a portion of the contract amount is subject to the availability of funds therefor. A contract provision somewhat as follows is suggested.

Funds are available in current appropriations and reserved for this contract in the amount of \$..... Completion of the contract is contingent upon appropriation of funds therefor. No legal liability on the part of the Government for the payment of more than \$..... shall arise unless and until such appropriation shall have been provided.

See 16 U.S.C. 557a regarding statutory authority and requirements for such conditional contracts in connection with the administration of the National Forests.

§ 4-2.450 [Deleted]

8. Section 4-2.450 is deleted.

(5 U.S.C. 301, 40 U.S.C. 486(c).)

Done at Washington, D.C., this 20th day of June, 1977.

E. ALVAREZ,
Director, Office of Operations.

[FR Doc. 77-17994 Filed 6-23-77; 8:45 am]

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-PR TEMPORARY REGULATION
NO. 35]

PART 9-1—GENERAL

PART 9-7—CONTRACT CLAUSES

AGENCY: Energy Research and Development Administration.

ACTION: Temporary regulation.

SUMMARY: ERDA Temporary Regulation No. 29, published in the FEDERAL REGISTER on April 29, 1977, made a number of changes in ERDA conflict of interest regulations on technical and management support services contracting. Because of the subsequent enactment of Public Law 95-39 signed by the President on June 10, 1977, Temporary Regulation No. 29, including its deadline of June 25, 1977, for comments, is canceled and is replaced by this temporary regulation. This regulation is more responsive to Public Law 95-39 which contains requirements relating to Organizational Conflicts of Interest in ERDA procurements.

EFFECTIVE DATE: June 24, 1977.

ADDRESS: Harry M. Tayloe, Division of Procurement, Rm. C-167, USERDA, Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

Harry M. Tayloe (302-353-5526).

SUPPLEMENTARY INFORMATION: Expiration date.—This regulation will remain in effect until canceled or until its provisions are incorporated into a permanent ERDA Procurement Regulation.

This temporary regulation, which modifies ERDA-PR Subparts 9-1.54 and 9-7.50, replaces Temporary Regulation No. 29, dated April 29, 1977, to reflect more accurately the intent of Public Law 95-39. The principal changes are (1) definitions of "evaluation services," "technical consulting and management support services," "research and development" and "architect-engineer services" and (2) the exclusion of procurements of research and development and architect-engineer services from applicability of Subpart 9-1.54.

In addition, this regulation modifies the Organizational Conflicts of Interest Clause included in Temporary Regulation No. 29, to conform its provisions to the changes contained herein.

A comprehensive revision of Subpart 9-1.54 will be completed by December 10, 1977. Therefore comments received within 60 days of this notice on any aspect of the subpart, including this temporary regulation, will be considered for inclusion in the revision.

1. Subpart 9-1.54 is amended by adding paragraph (c) to § 9-1.5402; revising § 9-1.5404; changing § 9-1.5405 by identifying the present provision as paragraph (a) and adding paragraphs (b), (c), (d), and (e); and adding paragraphs (d), (e), and (f) to § 9-1.5406.

Subpart 9-1.54 General Policy for the Avoidance of Organizational Conflicts of Interest

§ 9-1.5402 Scope and applicability.

(c) The disclosure provision set forth in § 9-1.5406(d) and the contract clause set forth in § 9-7.5006-40 need not apply to contracts and arrangements for (1)

research and development or (ii) architect and engineering services. (See § 9-1.5405 (d) and (e).)

§ 9-1.5404 Qualification and evaluation criteria, waiver.

(a) Failure on the part of an offeror to submit information pursuant to the disclosure provision set forth in § 9-1.5406(d) or to accept the Organizational Conflicts of Interest Clause set forth in § 9-7.5006-40 shall disqualify the offeror from further consideration for contract award. However, nothing contained herein shall preclude the offeror, because of a potential conflict, from proposing to exclude specific kinds of effort from the statement of work as contained in the solicitation unless the solicitation specifically prohibits such exclusion. Any such exclusion contained in the offeror's proposal shall be considered by the Government as an evaluation factor, and if the Government considers such proposed exclusion to be an essential or integral part of the required work, the offeror's proposal may be considered nonresponsive.

(b) A manager of a field office or the Director of Procurement, or their designees, may authorize the contracting officer to grant the waiver provided for in (e) of the Organizational Conflicts of Interest Clause set forth in § 9-7.5006-40.

§ 9-1.5405 Definitions.

(a) The term "organizational conflict of interest" means a situation where a contractor, normally a corporation, has interests, either due to its other activities or its relationships with other organizations, which place it in a position that may be unsatisfactory or unfavorable (1) from the Government's standpoint in being able to secure impartial, technically sound, objective assistance and advice from the contractor, or in securing the advantages of adequate competition in its procurement; or (2) from industry's standpoint in that unfair competitive advantage may accrue to the contractor in question.

(b) The term "evaluation services" means any work or effort involving the independent study of a particular technology, process, or product which entails the assessment, appraisal, or survey of such technology, process, or product.

(c) The term "technical consulting and management support services" means any work or effort to provide internal assistance to any ERDA program division or other organizational component in the formulation or administration of its programs or projects, which normally necessitates that the contractor be given access to internal ERDA information. Such services typically include assistance in the preparation of program plans; evaluation, monitoring or review of contractors' activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work; the making of recommendations,

or the rendering of an opinion or advice regarding any technical problem, issue, or question.

(d) The term "research and development" means any work or effort involving (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(e) The term "architect-engineer services" means work or effort of a professional nature associated with research, development, design and construction, alteration or repair of real property including utilities and appurtenances thereto. Such services embrace conceptual design and Title I, Title II and Title III work, as defined in ERDA-PR 9-18.306-50(b).

§ 9-1.5406 General policy.

(d) The following disclosure provision shall be included in all solicitations for evaluation and technical consulting and management support services as defined in § 9-1.5405. Where a formal solicitation is not used, the provision shall be furnished to the offeror in whatever manner is practical in order that ERDA may receive and evaluate the required information as a condition precedent to award.

DISCLOSURE STATEMENT REGARDING ORGANIZATIONAL CONFLICTS OF INTEREST

Pursuant to ERDA-PR Subpart 9-1.54, it is ERDA policy to avoid situations which place an offeror in a position where its judgment may be biased because of any present or planned interest, financial or otherwise, the offeror may have which relates to the work to be performed pursuant to this solicitation, or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, "offeror" means the proposer or any of its affiliate organizations or proposed subcontractors.) Therefore:

(1) The offeror shall provide a statement which describes in a concise manner all relevant facts concerning any present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible conflict of interest with respect to (a) being able to render impartial, technically sound, and objective assistance or advice, or (b) being given an unfair competitive advantage.

(2) In the absence of any interest referred to above, the offeror shall submit a statement certifying that to its best knowledge and belief no such interest exists.

(3) ERDA will review the statement submitted and may require that additional relevant information be provided by the offeror. The statement and any additional information required of the offeror or otherwise known to ERDA will be used to determine whether an award to the offeror may create a conflict of interest relating to bias or prior contractual restrictions. If such conflict is found to exist, ERDA may (i) disqualify the offeror, (ii) impose appropriate conditions which satisfactorily mitigate or avoid such conflict, or (iii) determine that it is otherwise in the best interests of the Government not to disqualify the offeror.

(4) Failure to provide the statement and any additional information required, or the nondisclosure or misrepresentation of any relevant interest shall result in disqualification under this solicitation or, if discovered after award, may result in termination at no cost to the Government, disqualification under subsequent related contractual efforts, and such other remedial action as may be permitted or provided by law or the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. § 1001.

(e) Notwithstanding any other provision contained in this subpart, the contract clause set forth in § 9-7.5006-40 shall be included in all contracts or arrangements for technical consulting and management support services and may be used, after any appropriate modification, in any contract or arrangement for evaluation services.

(f) The disclosure provision set forth in § 9-1.5406(d) and the contract clause set forth in § 9-7.5006-40 need not apply to contracts or arrangements for (1) research and development and (2) architect-engineer services, both as defined in § 9-1.5405.

2. Subpart 9-7.50 is amended by adding § 9-7.5006-40 as follows:

Subpart 9-7.50 Use of Standard Clauses

§ 9-7.5006-40 Organizational conflicts of interest.

The following contract clause shall be included in all contracts or arrangements for technical consulting and management support services as defined in § 9-1.5405(c) and may be included, after any appropriate modification, in any contract or arrangement for evaluation services as defined in § 9-1.5405(b).

Article—Organizational Conflicts of Interest.—(a) *Purpose.* The primary purpose of this clause is to aid in ensuring that the contractor (1) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract, and (2) is not biased because of its current or planned interest (financial, contractual, organizational, or otherwise) which relate to the work under this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliate organizations or their successors in interest (hereinafter collectively referred to as the "Contractor") in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity.

(1) *Technical Consulting and Management Support Services:* (i) If the Contractor performs technical consulting or management support services, as defined in paragraph (f) below, or similar work, under this contract, it shall be ineligible thereafter to participate in any capacity in Government contractual efforts (solicited or unsolicited) which stem directly from such work, and the Contractor agrees not to perform similar work for prospective offerors with respect to any such contractual efforts. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any such work under this contract on any of its products or services, or the products or services of another firm for which the Contractor performs similar work. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for tech-

nical consulting and management support services.

(ii) If the Contractor under this contract assists substantially in the preparation of a statement of work or specifications, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall exclude the Contractor from offering or selling its standard commercial items to the Government.

(2) *Access to and use of information:* (1) If the Contractor, in the performance of this contract, obtains access to information, such as ERDA's plans, policies, reports, studies, financial plans, or data, which has not been released to the public, the Contractor agrees not to (a) use such information for any private purpose unless the information has been released to the public, (b) compete for work for ERDA based on such information for a period of six (6) months after the completion of this contract, or the release of such information to the public, whichever is first, (c) submit an unsolicited proposal to the Government which is based on such information until one (1) year after the release of such information to the public, and (d) release such information without prior written approval by the Contracting Officer.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data or other confidential technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it first produces under this contract for its private purposes provided that, as of the date of such use, all data requirements of this contract have been met.

(c) *Subcontracts.* The Contractor shall include this clause, including this paragraph, in subcontracts of any tier which involve performance of work of the type specified in (b) (1) above or access to information covered in (b) (2) above. The use of this clause in such subcontracts shall be read by substituting the word "subcontractor" for the word "Contractor" wherever the latter appears.

(d) *Remedies.* For breach of the above restrictions or for nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract, the Government may, at no cost, terminate the contract, disqualify the Contractor for subsequent related contractual efforts, and pursue other remedies as may be permitted by law or this contract.

(e) *Waiver.* Any request for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interest of the Government, the Contracting Officer shall grant such waiver in writing.

(f) *Definition.* The term "technical consulting and management support service" means any work or effort to provide internal assistance to any ERDA program division or other organizational component in the formulation or administration of its programs or projects which normally necessitates that the contractor be given access to internal ERDA information. Such services typically

include assistance in the preparation of program plans, evaluation, monitoring or review of contractors' activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work; the making of recommendations, or the rendering of an opinion or advice regarding any technical problem, issue, or question.

(Section 105 of the Energy Reorganization Act of 1974 P.L. 93-438.)

Dated: June 14, 1977.

WILLIAM A. PARKER,
Acting Director of Procurement.

[FR Doc. 77-18142 Filed 6-23-77; 8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER J—HEALTH CARE DELIVERY SYSTEMS

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

Interim Regulations

Correction

In FR Doc. 77-16002 appearing at page 29399 in the issue for Wednesday, June 8, 1977 the term now reading "Traditionally qualified health maintenance organization" on page 29414, middle column, in paragraph (b) of § 110.602 should have read "Transitionally qualified health maintenance organization".

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

Editorial Amendments

Correction

In FR Doc. 77-14890 appearing at page 27200 in the issue for Friday, May 27, 1977, in the table under § 2.603 (a) make the following correction on page 27203: For the 13th entry, "1975—TOAS 8301" in the 5th line of the "Subject" description, the reference to "TIAS 8112" should have been "TIAS 8112".

[Docket No. 19528; FCC 77-396]

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NET- WORK

Interstate and Foreign Message Toll Tele- phone Service (MTS) and Wide Area Telephone Service (WATS)

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: This document revises the technical (and certain administrative) requirements of the FCC's telephone equipment registration program, in response to petitions for reconsideration.

EFFECTIVE DATE: July 20, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CON-
TACT:

Michael S. Slomin, Policy and Rules Division, Common Carrier Bureau, 202-632-9342.

SUPPLEMENTARY INFORMATION:

Adopted: June 8, 1977.

Released: June 20, 1977.

Memorandum opinion and order. In the matter of proposals for new or revised classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS), Docket No. 19528.

1. Over the course of the past year and a half, the Commission has adopted a telephone equipment registration program for all classes of telephone terminal equipment except coin telephones and equipment used in conjunction with party-line telephone service. This program is designed to allow users of the nationwide telephone network to connect terminal equipment without the need for carrier-supplied connecting arrangements and network control signaling units, provided that such equipment complies with the standards of the registration program as contained in Part 68 of the FCC's rules and regulations.¹ Judicial review was sought of our decisions in Docket No. 19528, and the United

¹ The registration program was established in our First Report and Order in Docket No. 19528, 56 F.C.C.2d 593 (1975) and initially applied to all equipment other than key telephone and Private Branch Exchange (PBX) systems, main telephones, coin telephones, and equipment used with party-line service. In a February, 1976 order, we generally affirmed the First Report, 57 F.C.C.2d 1216 (1976), and established "grandfathering" and short-form application procedures to phase in registration of equipment. In March, 1976, we revised the program's technical standards and requirements, 58 F.C.C.2d 716 (1976) and 41 FR 12673-79, March 26, 1976 in partial reconsideration of the First Report.

The program was then extended in a Second Report and Order, 58 F.C.C.2d 736 (1976) to encompass key telephone and PBX systems, and main telephones. In partial reconsideration thereof, the Second Report was generally affirmed in an October, 1976 order, 61 F.C.C.2d 396 (1976), although certain technical matters were left pendant.

In an April, 1976 order, 59 F.C.C.2d 83 (1976), we issued a declaratory ruling clarifying the "grandfathering" and short-form application procedures in response to petitions seeking such clarification.

Registered equipment is required to be connected to the telephone network using means of connection specified in Part 68. Standard plugs and jacks were adopted for this purpose in Docket No. 20774, 41 FR 28694, July 12, 1976.

Finally, the transition period during which "grandfathered" equipment may be connected without registration was recently extended by the Chief, Common Carrier Bureau under delegated authority to January 1, 1978. See Memorandum Opinion and Order released May 31, 1977, No. 70182.