a need for additional funding which was caused by extraordinary circumstances beyond the control of the Federal agency and which could not reasonably have been foreseen.

§ 436.80 Operation and maintenance reports.

Commencing within 60 days of completion of the acceptance testing plan, and continuing on a quarterly basis for the first year of operation and on an annual basis thereafter for a total of three operating years, the Federal agency shall submit on a project by project basis, the following information—

(a) Data recorded on a monthly basis from installed instrumentation for—

(1) The total amount of solar generated Btu's transferred into storage, where applicable;

(2) The total amounts of solar generated Btu's consumed in each building for hot water, heating, or cooling, respectively; and

(3) The estimated, or actual, if available, energy savings by fuel type and costs savings for hot water, heating, or heating and cooling; and

(b) Solar energy system data and information for—

(1) All operating and maintenance actions performed which have a potential significant impact on the cost, performance, or safety of the solar energy system or components, or are indicative of operating or maintenance problems which might affect the performance and operation of other solar energy systems. Information submitted must include—

(i) A complete description of the action performed;

(ii) The solar energy equipment and component involved;

(iii) The resulting cost; and

(iv) The corrective action taken; and

(2) Monthly cost estimates of all normal and significant operating and maintenance actions required to keep the solar energy system in operating condition. Specific routine actions need only be reported based on a monthly accumulation of their actual or estimated costs.

[FR Doc. 79-32235 Filed 10-18-79; 8:45 am]

BILLING CODE 6450-01-M

federal register

Friday
October 19, 1979

Part VIII

Council on Wage and Price Stability

Data Requests

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 707

Data Requests

AGENCY: Council on Wage and Price Stability.

ACTION: Interim Final Rule on Data Requests, with comments requested.

SUMMARY: The Council is combining all present data requests and specifications, previously included in other parts of this Chapter, into a new Part 707, titled Data Requests. Part 707 relates and refers to Part 705, "Anti-Inflationary Pay and Price Standards," and Part 706, "Procedural Rules," which have recently been published in the **Federal Register** as interim final standards and rules, with comments requested (44 FR 56900–16). The period for public comment on Parts 705 and 706 does not close until October 17, 1979. Any changes in Parts 705 and 706 as a result of the public comments will result in corresponding changes in this Part.

DATES: The effective date of the Part 707 is October 19, 1979. Comments on this interim final rule on data requests must be received on or before November 12, 1979.

ADDRESS: Written comments should be addressed to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: For further information on—Pay, contact: Diane J. Mazur, 456–7100, Price (Subparts A, B, and C), contact:

Industries, Contact Person, and Telephone Number

Metals, Machinery & Equipment, Eugene Roberts, 456–7784.
Food, Agriculture & Trade, Steve Hiemstra, 456–7740.
Energy, Chemicals, Utilities, & Transportation, John Keith, 456–7747.
Construction & Building Materials, Joseph Lackey, 456–7156.
Health Insurance & Other Services, Arthur Corazzini, 456–7730.
Price (Subpart D), contact: Walter Leibowitz or David Wagner, 456–7733.

SUPPLEMENTARY INFORMATION: During the first year of the antiinflation program, data specifications and requests appeared throughout Parts 705 and 706, as well as in published Questions and Answers, and in the Council's Implementation Guide (44 FR 5339 (January 25, 1979)). When the Council published interim final standards and rules for the second program year, the descriptions of data requests were removed. The Council concluded that collecting all such materials in one part would assist the public by clarifying the types of data needed by the Council for its monitoring efforts. Part 707, then, supersedes the data requests and data specifications previously found in Parts 705 and 706 (as well as the Council's practices during the first year) and fills the potential void created by promulgating Parts 705 and 706 as interim final standards and rules.

Subpart A of Part 707, titled "Report of Company Organization and Statement of Assurance," relates to the reports by entities in the private and public sectors of company organization for purposes of compliance with the pay and price standards. Subpart B, titled "Periodic Data Reports," concerns data requested from compliance units, including government entities, for evaluating their compliance with the standards. Subpart C, titled "Data Submissions Supporting Variances from Intermediate and Margin Limitations," specifies the data necessary to justify excesses above the intermediate limits for increases in prices, profit margins, percentage gross margins, and gross margins. Subpart D, titled "Data Submissions Supporting Exception Requests," concerns the submission of data to support specific exception requests.

There are references in Part 707 to various data-collections forms. These forms have been developed by the Council in response to public requests and Council needs for simplicity and conformity of data submissions. Forms PM–1 and PAY–1 have previously been approved by the Office of Management and Budget and are therefore not included in this document, even though the Council has or shortly will request approval for minor revisions of these forms. Two forms not previously approved—Form CO–1 (PAY) and Form CO–1 (Price) for reporting company reorganization—essentially reflect the data requests contained last year in Part 706. Another new form—PAY–2 for compliance reports by State and local governments—is a scaled-down version of Form PAY–1 that is designed for the public sector. All of these forms are attached to this document and included within the Council's request for public comments. These forms will be submitted shortly to the Office of Management and Budget for approval.

The Council is soliciting public comments not only on the language of proposed Part 707 and the attached forms, but also on the general subject of data requests by the Council.

Issued in Washington, D.C., October 15, 1979.

R. Robert Russell,
Director, Council on Wage and Price Stability.

Accordingly, Part 707, Title 6 CFR, is adopted on an interim basis to read as follows:

PART 707—DATA REQUESTS

Authority: Council on Wage and Price Stability Act, P.L. 93–387 (August 14, 1974), as amended by P.L. 9478 (August 9, 1975), P.L. 95–121 (October 5, 1977), and P.L. 96–10 (May 10, 1979), 12 U.S.C. 1904 note; E.O. 12092 (November 3, 1978), E.O. 12161 (September 28, 1979).

Subpart A—Report of Company Organization and Statement of Assurance

§ 707.1 Company organization.

Companies specified in § 706.21 should furnish to the Council:

(a) A completed Form CO–1 (Price); and/or

(b) A completed Form CO–1 (Pay) for each pay compliance unit, unless the compliance unit is part of a State or local government and elects to file under § 707.02.

§ 707.2 Statement of assurance of compliance by State and local governments.

A State or local government as specified in § 706.23 that does not file under § 707.01(b) should furnish to the Council a statement of assurance from the head of the government entity that the entity intends to comply with the pay standard.

Subpart B—Periodic Data Reports

§ 707.10 Pay and price data reports.

Compliance units specified in § 706.22 should furnish to the Council:

(a) A completed Form PM–1, unless the compliance unit is a provider of medical or dental insurance subject to § 705.48 or a utility subject to § 705.45; and/or

(b) A completed Form PAY–1, unless the compliance unit is part of a State or local government, or

(c) A completed Form PAY–2 if the compliance unit is a State or local government as specified in § 706.23.

Subpart C—Data Submissions Supporting Variances From Intermediate Price and Margin Limitations

§ 707.20 Intermediate price limitations.

A compliance unit that exceeds any of the intermediate price limitations in § 705.3(a) through (c) should prepare and/or furnish to the Council with its Form PM–1 (a) A demonstration that the increase in prices exceeding the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of price changes over the five years before the first program year),

(2) Historical business practice, or

(3) Unusual business conditions; and

(b) Projected price changes for the second program year, demonstrating that increases in prices exceeding the intermediate limit(s) are consistent with adherence to the two-year price limitation by the end of the program year.

§ 707.21 Intermediate profit limitations.

A compliance unit that exceeds any of the intermediate limits for the profit limitation in § 705.6(a)(1) should prepare and/or furnish to the Council with its Form PM–1 a demonstration that a profit margin in excess of the profit limitation is consistent with an explicit plan, based on reasonable projections of economic conditions, to achieve compliance with the profit limitation by the end of the second program year.

§ 707.22 Intermediate percentage-gross-margin limitations

A compliance unit in the wholesale/retail trade industries that exceeds any of the intermediate percentage-gross-margin limitations in § 705.42(d) should prepare and/or furnish to the Council with its Form PM–1:

(a) A demonstration that any increase in percentage gross margins in excess of the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of change in gross margins over the five years before the first program year),

(2) Historical business practices, or

(3) Unusual business conditions; and

(b) Projected percentage-gross margins demonstrating that pricing actions are consistent with adherence to the percentage gross-margin standard by the end of the second program year.

§ 707.23 Intermediate gross-margin limitations.

A compliance unit subject to the gross-margin standard that exceeds any of the intermediate gross-margin limitations in § 705.43(d) or § 705.44(d) should prepare and/or furnish to the Council with its Form PM–1.

(a) A demonstration that any increase in gross margins in excess of the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of change in gross margins over the five years before the first program year),

(2) Historical business practices, or

(3) Unusual business conditions; and

(b) Projected gross margins demonstrating that pricing actions are consistent with adherence to the gross-margin standard by the end of the second program year.

Subpart D—Data Submissions Supporting Exception Requests

§ 707.30 General.

Each request for approval of exception should include: (a) The name and address of the compliance unit making the request, including the name(s), title(s), and phone number(s) of person(s) whom the Council may contact concerning the request, and the name and address of the company of which the unit is a part, if different from that of the compliance unit;

(b) The name(s), address(es), and phone number(s) of union representatives, if the request involves a collective-bargaining situation, or the name(s), address(es), and phone number(s) of relevant company officials if the request is made by an employee unit;

(c) A demonstration that the compliance unit or employee unit requesting the exception satisfies the criteria of § 706.31(a) or, if the request is submitted under § 706.31(b), a demonstration that there is good cause for the Council to entertain the request; and

(d) The particular provisions of the standards that are the subject of the request, a precise description of the exception request, and the pay and/or price action that the entity making the request proposes to take if the exception is granted.

§ 707.31 Tandem pay-rate exceptions.

For an exception to the pay standard based on tandem pay-rate changes (705B–9), a compliance unit should submit:

(a) Documentation of a clear leader/follower relationship between the two employee units;

(b) Documentation of the value and timing of past pay-rate increases of the two employee units over the prior six years; and

(c) An estimate of the effect that the exception would have on the compliance unit's pay rates.

§ 707.32 Productivity-improving work-rule-change exceptions.

For an exception to the pay standard based on pay-rate increases traded for productivity-improving work-rule changes (705B–10), a compliance unit should submit:

(a) An explanation of the work-rule change(s);

(b) An analysis of how the cost reduction will be generated by the work-rule change(s);

(c) An estimate of the effect that the exception would have on the compliance unit's pay rates; and

(d) Documentation that the cost reduction generated by the work-rule change(s) will be equal to or greater than the excess of the pay increase over the pay standard.

§ 707.33 Acute-labor-shortage exceptions.

For an exception to the pay standard based on pay-rate changes needed because of acute labor shortages (705B–11), a compliance unit should submit:

(a) Documentation that, for the particular job categories, the proportion of vacancies relative to the work force and the time or effort required to fill them have increased abnormally during the preceding quarter relative to the two prior years;

(b) Documentation that pay rates for employees in those job categories have increased abnormally over the two prior years and that the requested pay rates for the shortage categories are comparable to pay rates in the relevant labor market;

(c) A statement that the applicant has sought the assistance of the local Employment Service Agency to obtain employees;

(d) Documentation of the proportion of the compliance unit's work force that would be affected; and

(e) An estimate of the effect that the exception would have on the compliance unit's pay rates.

§ 707.34 Undue-hardship and gross-inequity exceptions.

For an exception to the pay or price standard based on undue hardship or gross inequity (§ 705.6(b) or § 705B–12), a compliance unit should submit:

(a) A precise description of the hardship or inequity that would be created by application of the standard (including, with respect to hardship, a demonstration of the effect on the *company's*—as distinguished from the compliance unit's—financial viability);

(b) An explanation of how the requested exception would mitigate the hardship or inequity resulting from application of the standard; and

(c) If the request is for an exception to the pay standard, an estimate of the effect that the exception would have on the compliance unit's pay rates.

§ 707.35 Inability-to-compute exceptions.

For an exception to the price standard based on inability to compute a two-year change (§ 705.6(a)), a compliance unit should demonstrate that sampling is infeasible due to inadequate data or that sampling is unduly onerous or costly.

§ 707.36 Uncontrollable-cost exceptions.

For an exception to the price standard based on uncontrollable cost increases (§ 706.6(a)), a compliance unit should:

(a) Demonstrate that the two-year rate of increase in costs per unit of output since the base quarter exceeded the two-year price limitation and are expected to continue to do so by an amount that would result in a significant erosion of the profit margin of the compliance unit if it were held to the two-year price limitation;

(b) Demonstrate that the cost increases are substantially uncontrollable (this requires, at a minimum, quantification of the shares of total cost increases accounted for by each significant cost increase that is wholly and demonstrably uncontrollable); and

(c) Account for the degree to which such increases are offset by normal gains in the efficiency of using inputs (productivity).

§ 707.37 Uncontrollable-cost exceptions to a percentage-gross-margin standard.

For an exception to the percentage-gross-margin standard (§ 705.42) based on uncontrollable cost increases, a compliance unit should demonstrate that total costs excluding those subtracted from revenues when calculating gross margin, as defined in § 705.42(b)(1), and excluding those items included in the definition of profit, as defined in § 705.77(a), divided by revenues have risen since the base quarter at an annual rate in excess of the percentage-gross-margin trend or zero, whichever is greater, and are expected to continue to do so by an amount that would result in a signficant erosion of the profit margin of the compliance unit if it were held to the gross-margin standard. The compliance unit should also satisfy § 707.36 (b) and (c).

§ 707.38 Uncontrollable-cost exceptions to a gross-margin standard.

For an exception to a gross-margin standard (§ 705.43, § 705.44, or § 705.45) based on uncontrollable cost increases, a compliance unit should demonstrate that total costs excluding those subtracted from revenues when calculating gross margins, as defined in § 705.43(b)(1), §705.44(3), or § 705.45(b), and excluding those items included in the definition of profit, as defined in § 705.77(a), have risen since the base quarter at an annual rate in excess of the sum of 6.5 percent and the annual rate of growth of physical volume and are expected to continue to do so by an amount that would result in a significant erosion of the profit margin of the compliance unit if it were held to the gross-margin standard. The compliance unit should also satisfy § 707.36 (b) and (c).

Form CO–1 (Instructions)
(10–10–79)

PROPOSED

Executive Office of the President, Council on Wage and Price Stability

Instructions for Preparation of Report of Company Organization

Form CO–1 (Price)

A. *Purpose of Form CO–1 (Price).* The Council on Wage and Price Stability has developed a form for reporting on company organization, Form CO–1 (Price), to help the Council monitor compliance with the voluntary price standard. During the first program year, companies were asked to report to the Council on their organization for compliance with the standards, but no form was provided. Most companies submitted lengthy reports. It is expected that Form CO–1 (Price) will greatly reduce the reporting burden on companies. In general, the Council wishes to obtain these data needed to monitor compliance with the voluntary standards while placing a minimum burden on companies.

B. *Authority for Form CO–1 (Price).* The Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, authorized the Council to collect data on wages, costs, productivity, prices, sales, profits, imports, and exports by product line or by such other categories as the Council may prescribe.

C. *Publication of the Revised Standards.* The revised price standard was published in the **Federal Register** at 44 FR 56904 to 56910 on October 2, 1979. *Please note:* all of the terms used on Form CO–1 (Price) as well as the referenced Sections are as defined or set forth in the revised standard.

D. *Confidentiality of Information.* All information furnished the council on Form CO–1 (Price) will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act 12 U.S.C. Section 1904, note, and 6 CFR Part 702, 44 FR 59166 (October 2, 1979).

E. *Who Should File*

(1) Any company or compliance unit specifically requested by the Council to do so.

(2) Any other company, as defined in 705.63, with at least $250 million in net sales or revenues (from domestic operations only) in its last complete fiscal year before October 2, 1979, unless the entire company is a financial institution subject to 705.50 or an insurance company subject to 705.48 or 705.49.

F. *Choice of Organization for Compliance.* A company may be divided into two or more compliance units if the conditions in 705.64 are satisfied. Companies need not adopt the same organizational structure as in the first program year. Also, the organizational structure adopted for compliance with the price standard need not be the same structure as that adopted for compliance with the pay standard.

BILLING CODE 3510-22-M

PROPOSED

FORM CO-1
(10-9-79)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY

REPORT OF COMPANY ORGANIZATION
FOR THE SECOND PROGRAM YEAR

PARENT COMPANY REPORT

NOTICE – All information furnished to the Council on Form CO-I will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price S lity Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 FR 59166 (October 12, 1979)

PLEASE READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS REPORT

Send this form with relevant attachments to:
Office of Price Monitoring
Council on Wage and Price Stability
Winder Building
600 17th Street, NW.
Washington, D.C. 20506

NOTE: Please indicate "Submission of Form CO-I (Price)" in the lower left hand corner of the envelope.

What were the total consolidated net sales or revenues of this company in its last complete fiscal year prior to October 2, 1979?

Bil.	Mil.	Thou.

Certification

a. Name of Chief Executive Officer or authorized designee	Title
b. Name of Company	Telephone *(Area code, No., Ext.)*
c. Name of person to contact regarding this report	Telephone *(Area code, No., Ext.)*
d. Address *(If different from mailing label)*	

To the best of my knowledge and belief, the data submitted herewith are factually correct, complete, and prepared in accordance with instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

e. Signature	Date

PROPOSED

LIST OF COMPLIANCE UNITS

(a) Name of Compliance Unit	(b) Principal Line of Business	(c) SIC No. 1/	(d) Same Compliance Unit as First Program Year?	(e) Standard Followed (Circle Choices) 2/	(f) CWPS Use Only
1.			Yes No	A B C D F I M P U	
2.			Yes No	A B C D F I M P U	
3.			Yes No	A B C D F I M P U	
4.			Yes No	A B C D F I M P U	
5.			Yes No	A B C D F I M P U	
6.			Yes No	A B C D F I M P U	
7.			Yes No	A B C D F I M P U	
8.			Yes No	A B C D F I M P U	
9.			Yes No	A B C D F I M P U	
10.			Yes No	A B C D F I M P U	
Total Company					

1/ Four-digit 1972 Standard Industrial Classification Code
2/ Code for Standards Followed:

A - Price Limitation
B - Percentage-Gross-Margin Standard for Wholesale and Retail Trade
C - Gross-Margin Standard for Food Manufacturing and Processing
D - Gross-Margin Standard for Petroleum-Refinery Operations
F - Standard for Financial Institutions
I - Price Standard for Insurance Providers
M - Price Standard for Medical and Dental Insurance Providers
P - Profit Limitation
U - Gross-Margin Standard for Electric, Gas and Water Utilities

PROPOSED

Attach continuation sheets if necessary

SALES OR REVENUES FOR THE FIRST PROGRAM YEAR

Compliance Unit No.	(g) Total Sales or Revenues			(h) Non-Arms Length Transactions 705.4 (a) (8)			(i) New or Discontinued Products 705.4 (a) (9)			(j) Custom Products 705.4 (a) (10)			(k) Deliveries at Present Prices 705.4 (b)			(l) Covered Sales or Revenues 3/ (after exclusions)		
	Bil.	Mil.	Thou.	Bil.	Mil.	Thou.	Bil.	Mil.	Thou.	Bil.	Mil.	Thou.	Bil.	Mil.	Thou.	Bil.	Mil.	Thou.
1.																		
2.																		
3.																		
4.																		
5.																		
6.																		
7.																		
8.																		
9.																		
10.																		

3/ Show covered sales after all exclusions under 705.4

BILLING CODE 3510-22-C

Form CO-1 (Instructions)
(10-10-79)
PROPOSED

Executive Office of the President, Council on Wage and Price Stability

Instructions for Preparation of Report of Company Organization

Form CO-1 (Pay)

A. *Purpose of Form CO-1 (Pay).* The Council on Wage and Price Stability has developed a form for reporting on company organization, Form CO-1 (Pay), to help the Council monitor compliance with the voluntary pay standard. Companies with 5,000 or more employees are requested to report their organization for compliance with the pay standard for the second program year. The Council wishes to obtain that information needed to monitor compliance with the voluntary standards while placing a minimum burden on companies. It is expected that Form CO-1 (Pay) will help achieve these objectives.

B. *Authority for Form CO-1 (Pay).* The Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, authorized the Council to collect data on wages, costs, productivity, prices, sales, profits, imports, and exports by product line or by such other categories as the Council may prescribe.

C. *Publication of the Pay Standard.* The first-year pay standard, published in the **Federal Register** at 44 FR 60772 (December 28, 1978); 44 FR 9582 (February 13, 1979); and 44 FR 17910 (March 23, 1979) remain in effect during the second program year until the Council acts on the recommendations of the Pay Advisory Committee. All of the terms used on Form CO-1 (Pay) as well as the referenced sections are as defined or set forth in the standard.

D. *Confidentiality of Information.* All information furnished to the Council on Form CO-1 (Pay) will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act 12 U.S.C. Section 1904, note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

E. *Who Should File.*

(1) Any company or compliance unit specifically requested by the Council to do so.

(2) Any other company, as defined in 705.63, with 5,000 or more employees during any calendar quarter of its last complete fiscal year before October 2, 1979.

F. *Choice of Organization for Compliance.* A company may be divided into two or more compliance units if the conditions in 705.64 are satisfied. Companies need not adopt the same organizational structure as in the first program year. Also, the organizational structure adopted for compliance with the pay standard need not be the same as that adopted for compliance with the price standard.

BILLING CODE 3510-22-M

PROPOSED

FORM CO-1 (10-9-79) EXECUTIVE OFFICE OF THE PRESIDENT COUNCIL ON WAGE AND PRICE STABILITY REPORT OF COMPANY ORGANIZATION FOR THE SECOND PROGRAM YEAR PARENT COMPANY REPORT	NOTICE – All information furnished to the Council on Form CO-I will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 FR 59166 (October 12, 1979)
PLEASE READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS REPORT	**Send this form with relevant attachments to:** **Office of Pay Monitoring** **Council on Wage and Price Stability** **Winder Building** **600 17th Street, NW.** **Washington, D.C. 20506** (PAY) NOTE: Please indicate "Submission of Form CO-I" in the lower left hand corner of the envelope.

Certification

a. Name of Chief Executive Officer or authorized designee	Title
b. Name of Company	Telephone (*Area code, No., Ext.*)
c. Name of person to contact regarding this report	Telephone (*Area code, No., Ext.*)
d. Address (*If different from mailing label*)	
To the best of my knowledge and belief, the data submitted herewith are factually correct, complete, and prepared in accordance with instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Part 702 , 44 FR 59166 (October 12, 1979).	
e. Signature	Date

PROPOSED

LIST OF COMPLIANCE UNITS

(a) Name of Compliance Unit	(b) Principal Line of Business	(c) SIC No. 1/	(d) Beginning Date of Second Program Year	(e) Employees 2/	(f) CWPS Use Only
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

1/ Four-digit 1972 Standard Industrial Classification Code

2/ Show the number of employees at the beginning date of the second program year

BILLING CODE 3510-22-C

Form Pay-2 (Instructions)
(10/15/79)
Proposed

Executive Office of the President, Council on Wage and Price Stability

Instructions for the Preparation of Form Pay-2, Report on Compliance With the Pay Standard for State, County and City Governments

I. *General Instructions*

A. *Purpose of Form Pay-2.* Form Pay-2 is used by the Council on Wage and Price Stability as a means for collecting data from State and local governments. The information requested will allow the Council to meet two objectives. First, the data will be used to determine the extent to which governments have complied with the voluntary standard on pay-rate increases. Second, governments are asked to report actual pay-rate increases, as well as those chargeable under the Pay Standard, to enable the Council to determine the effect of the "exclusions" on total pay rates and measure the inflationary impact of actual labor costs. The submission of data on Form Pay-2 is voluntary. However, the Council views the access to timely, uniformly defined data as essential to the effective monitoring of compliance with the standard.

B. *Authority for Form Pay-2.* The Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, authorizes the Council to collect data on wages, costs, productivity, prices, sales, profits, imports, and exports by product line or by such other categories as the Council may prescribe.

C. *Confidentiality of Information.* All information furnished to the Council on Form Pay-2 will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C., 1904, note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

D. *Who Should File.* All states, counties, and cities with 5,000 or more employees and any other governments designated by the Council are requested to file.

E. *What to File.* Each reporting government is requested to submit a separate Pay-2 (one copy) for its individual employee units as defined in Section 705B-2 of the Pay Standard. However, regarding collective-bargaining units, governments are requested to file reports only for collective-bargaining contracts negotiated during the program year (and not considered exempt as specified in Section 705B-3(e) of the Pay Standard). Governments should report base-period pay rates (column a) and projected pay rates for the end of the program year (column b).

F. *Where to File.* Form Pay-2 should be sent to: Office of Pay Monitoring, Council on Wage and Price Stability, Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

II. *Specific Instructions*

A. *Publication of Pay Standard and Definitions of Terms.* All of the terms used on Form Pay-2 as well as the referenced sections are as defined or set forth in the standard. The first year pay standard was published in the Federal Register at 44 FR 60772 (December 28, 1978); 44 FR 9582 (February 13, 1979); and 44 FR 17910 (March 23, 1979). The standard is further explained in the "Pay and Price Standards—Implementation Guide" at 44 FR 5339 (January 25, 1979) and by the questions and answers appearing with these publications. Additional questions and answers appear at 44 FR 32338 (June 25, 1979). Special Procedural Rules for complying with the standard appear at 44 FR 1346 (January 4, 1979); 44 FR 5337 (January 25, 1979); 44 FR 9585 (February 13, 1979); 44 FR 17916 (March 23, 1979); and 44 FR 23777 (April 20, 1979).

B. *Note on Calculations of Pay Rates.* For compliance with the standard, pay excludes all wages and benefits to workers earning straight-time wages of four dollars per hour or less as of October 1, 1978, as well as wages and benefits for workers hired during the program year at a straight-time wage of four dollars per hour or less. Also, pay excludes deferred compensation paid in the base period but earned in an earlier period. Pay includes deferred compensation earned in the program period but not paid in the program period.

All pay rates should be calculated as pay per straight-time hour worked. When paid leave hours are incurred irregularly, these hours should be calculated according to the leave practices in effect at the end of the base quarter and at the end of the program year as though they were incurred evenly over time. Governments may use a straight-time hours-paid-for basis (e.g., for salaried workers) where paid leave is included in straight-time wage and salary pay and only changes to paid leave practices are reported as a benefit. Increases/decreases in paid leave hours during the program period affect the straight-time hours and correspondingly will increase/decrease the cost of all benefits. The Council does not expect governments to make inordinate calculations to complete this form; a good faith estimate should be made when data are not available.

C. *Instructions on Some Specific Items on Form Pay-2.*

Item 3—The compliance unit may use either the base quarter (program quarter) or the last pay period within the respective quarter.

Part II—*Pay-Rate Data*

Item A—Straight-time wages should include cost-of-living adjustments (COLAs), longevity/merit increments, and qualification increments. Check the appropriate box indicating the items included in this category. For multi-year agreements, enter the pay rate at the end of the old contract in *column a* and the pay rate at the end of the new contract in *column b.* The projected pay rate to be in effect at the end of each year of the multi-year agreement should be reported in Section G.

Item B—Benefits include, where applicable, employer contributions or costs for the items listed in Section B. (See also 705D definition of "Pay").

Item D—The pay standard provides exceptions, exclusions, and special treatment of some pay. Use this item to enter the amounts of pay which may be subtracted from the actual pay rate to give the chargeable pay rate under the pay standard. All amounts should be calculated as pay divided by straight-time hours.

Item D4—For an unaltered pay-related pension plan, governments may exclude the entire pension costs from both the base period and the program period.

Item D5—Enter on this line the amounts of pay exceptions whether granted by the Council or self-administered. Exceptions are made for tandem pay-rate changes (TA), pay-rate increases traded for productivity-improving work-rule changes in union agreements (WR), pay-rate increases attributable to acute labor shortages (LS), and undue hardship or gross inequity cases (WH). Check each type of exception next to the appropriate exception code.

BILLING CODE 3510-22-M

PROPOSED

Form Pay-2
(10/15/79)

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY

REPORT ON COMPLIANCE WITH THE PAY STANDARD FOR STATE, COUNTY AND CITY GOVERNMENTS

NOTICE – All information furnished to the Council on Form Pay-2 will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 FR 59166 (October 12, 1979)

PLEASE READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS REPORT

Send this form with relevant attachments to:
Office of Pay Monitoring
Council on Wage and Price Stability
Winder Building
600 17th Street, NW.
Washington, D.C. 20506

NOTE: Please indicate "Submission of Form Pay-2" lower left hand corner of the envelope.

1. Certification

Head of government or authorized designee	Title
b. Name of government	Telephone (Area code, No., Ext.)
c. Name of person to contact regarding this report	Telephone (Area code, No., Ext.)
d. Address (If different from mailing label)	

To the best of my knowledge and belief, the data submitted herewith are factually correct, complete, and prepared in accordance with instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

e. Signature	Date

2. Total number of employees in unit (low wage employees should be excluded)

Type of employee unit (See 705B-2): (check one)

☐ Collective bargaining ☐ Management ☐ All other

3. Compliance Comparison Periods:

(a) Base quarter (See 705D) or last pay period (mo.,day, yr,)
From: __ / __ / __ To __ / __ / __
(b) Program quarter (see 705D) or last pay period (mo.,day,yr.)
From: __ / __ / __ To __ / __ / __

4. Method of Computation: (Check one)

☐ (CB) Collective bargaining (705B-3) ☐ (UA) Unit average (snapshot) (705B-4a)

☐ (FP) Fixed population (705B-4b) ☐ (WA) Weighted average (705B-4e)

Note this choice determines the method of calculating columns (a) and (b) below

PROPOSED

Part II - Pay-Rate Data (Fill in only those items that apply to the method of calculation chosen).

	(a) Base-Quarter Pay Rate	(b) Program-Quarter Pay Rate
A. Straight-Time Wage and Salary (including cost of living adjustment ☐, longevity increment ☐, and/or qualification increment ☐).		
B. Benefits 1. Pay for time not worked		
2. Health Benefits		
3. Pension Benefits		
4. Other		
C. Total Pay Rate (Sum of A and B1 through B4)		
D. Adjustments 1. Amount over the 6% COLA assumption (See 705B-3)		
2. Qualification increments (See Q10, 44 FR 5363, II D, Q10)		
3. Maintenance of health benefits (See 705B-6)		
4. Pension benefits (See 705B-7)		
5. Pay exceptions Type (TA ☐ LS ☐ WR ☐ WH ☐)		
6. Other (Attach description)		
7. Adjustment totals (sum of D1 through D6)		
E. Adjusted Pay Rate (difference between C and D-7)		

	Percent
F. Summary 1. Percentage change in actual pay rate from base quarter to program quarter	%
2. Percentage change in adjusted pay rate from base quarter to program quarter	%
G. Yearly Percentage Changes in Adjusted Pay Rates for Multi-Year Agreements (See the Implementation Guide) 1. End of the first year	%
2. End of the second year	%
3. End of the third year	%
4. Over the contract period	%

H. Explain any circumstances that have caused the adjusted pay-rate change in F-2 above to exceed 7 percent

[FR Doc. 79-32403 Filed 10-18-79; 8:45 am]

BILLING CODE 3510-22-C

federal register

Friday
October 19, 1979

Part IX

Department of Energy

Economic Regulatory Administration

Powerplant and Industrial Fuel Use Act of 1978; Transitional Facilities

DEPARTMENT OF ENERGY

10 CFR Part 515

[Docket No. ERA-R-78-21]

Powerplant and Industrial Fuel Use Act of 1978; Transitional Facilities

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy is issuing this Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities for purposes of implementing the provisions of Titles II and III of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or the "Act"). This Final Rule amends certain provisions of the previously issued Revised Interim Rule (44 FR 17464, March 21, 1979).

The Final Rule automatically classifies powerplants and boilers which are major fuel burning installations ("MFBIs" or "installations") as "existing" if they were "operational" on or before April 20, 1977. In addition, the rule automatically classifies facilities for which a contract was signed prior to November 9, 1978 as "existing" on the basis that they have a design capability of consuming fuel at a fuel heat input rate which is less than 100 million Btu's per hour. The Final Rule also provides for existing facility classification upon certification, and in some cases a minimal reporting requirement, provided certain milestones are met by certain key dates. Moreover, powerplants and MFBIs, for which a contract for construction or acquisition was signed before November 9, 1978, will be classified as "existing" if they can demonstrate that construction or acquisition of their facility can not be cancelled, rescheduled or modified without incurring a substantial financial penalty, an adverse effect on electric system reliability (if a powerplant) or significant operational detriment (if an installation).

DATES: Effective date: November 30, 1979.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461 (202) 634-2170.

Daniel T. Ruge, Regulations and Emergency Planning, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 2130, Washington, D.C. 20461 (202) 254-3987.

Robert L. Davies, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128, Washington, D.C. 20461 (202) 254-7442.

G. Randolph Comstock, Office of General Counsel, Department of Energy, 1000 Independence Avenue, N.W., Room 6G-087, Washington, D.C. 20585 (202) 252-2967.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Act prohibits "new" powerplants and "new" boilers which are installations from using oil or natural gas as a primary energy source unless granted a specific exemption from this prohibition by ERA. It also prohibits "new" powerplants from being constructed without the capability to use coal or any other alternate fuel as a primary energy source. The Act classifies all powerplants and installations for which construction or acquisition began after April 20, 1977, as "new" unless otherwise classified by ERA as "existing" pursuant to ERA regulations. If classified as "existing," a powerplant or installation is subject to the provisions of Title III rather than Title II of the Act.

II. Significant Comments

A. Eligibility

In response to comments ERA received on the Revised Interim Rule concerning the eligibility criteria for both powerplants and major fuel burning installations (MFBI's), ERA has decided to change the Revised Interim Rule and is now issuing this Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Final Rule). Powerplants and installations which were "operational" on or before April 20, 1977, are still automatically classified as "existing" and need not request classification under Part 515. In addition, the regulations still provide that a facility which was operational on or before May 8, 1979 shall be automatically classified as "existing" upon proper certification.

In response to comments, ERA has revised the regulations to provide for automatic "existing" facility status, with a minimal filing requirement, for powerplants where the prefabricated packaged boiler or combustion turbine was shipped by the manufacturer by November 9, 1978, or in the case of a field-erected unit, the main steam drum was in place by November 9, 1978. This criteria previously applied solely to MFBI's.

ERA received several comments suggesting that receipt of a so-called "closed-out" letter under the Energy Supply and Environmental Coordination Act (ESECA) should suffice to establish "existing" facility status under FUA. As was previously discussed in the preamble to the Revised Interim Rule, ERA believes that Congress viewed the implementation of FUA separately from the implementation of ESECA, except where it expressly provided otherwise (44 FR at 17465, March 21, 1979). In Section 103 of FUA, Congress established criteria which permit ERA to determine a facility's status as "new" or "existing" that are different than the "early planning process" criteria employed in the ESECA regulations. Therefore, ERA believes that it would contravene the intent of Congress to accord any special consideration to a facility under FUA based on the mere receipt of an ESECA "close-out" letter.

Several of these commenters further stated that recipients of "close-out" letters who placed good faith reliance on these letters and proceeded with their construction plans should be automatically classified as "existing". ERA believes that in those instances where construction proceeded as originally scheduled, the facility will receive equitable treatment under the provisions of these regulations. Nevertheless, transitional facilities which received a "closed-out" letter or did not receive a notice of intention to issue a construction order under ESECA, must file for classification under this part unless they were operational on or before April 20, 1977.

ERA has also amended the Revised Interim Rule to provide that, upon filing the necessary information, a facility which was completed and ownership of the unit was transferred from the manufacturer to a purchaser on or before April 20, 1977 will be classified as existing.

Several commenters stated that ERA's position in the Revised Interim Rule that a facility must be "operational" on or before April 20, 1977, before it will be automatically considered "existing" contravenes the intent of Congress. They stated that under FUA, an "existing" powerplant or MFBI means a facility other than a "new" one, and a "new" facility is one for which construction or acquisition commenced after April 20, 1977. Therefore, the commenters argued that notwithstanding the language in Section 103(a)(13)(B)(ii), in a case where construction or acquisition commenced prior to April 20, 1977, the facility must be considered "existing" regardless of whether it was operational by that date. ERA does not agree with that interpretation of FUA. The term "construction or acquisition began" as used in FUA is a term of art that does not always have precise or identical applicability to all transitional facilities. The legislative history cited by the commenters and the additional history ERA has reviewed fails to provide a precise definition nor do any of the comments ERA has received. Therefore, ERA has, of necessity, resorted to a case-by-case analysis to make this determination. We have established a test which, in general, provides that any facility which was not operational on or before April 20, 1977, but for which a contract had been signed prior to November 9, 1978, must file a written request for classification and ERA will make its determination on a case-by-case basis. Pursuant to Section 103(a)(13)(B)(ii) of FUA, ERA can make a determination whether construction or acquisition which may have been contracted for prior to April 20, 1977, could nevertheless be cancelled, rescheduled or modified without imposing a substantial financial penalty, and in the case of a powerplant without adversely affecting electric system reliability and in the case of an MFBI without incurring a significant operational detriment. Many of the comments received would negate this provision of FUA.

Several comments suggested that if the unit was operational on November 9, 1978, a request for classification need not be filed. ERA recognizes that such a facility is "existing" and has provided for only a minimum reporting requirement which ERA feels is necessary to properly meet its responsibility under the Act.

ERA received one comment suggesting that eligibility should not be limited to an executed contract for the unit itself. Sections 515.3 and 515.10 of the regulations clearly provide that the contract need only be for "the construction or acquisition" of the unit. Section 515.20(c)(6) further provides that the legally binding agreement must be for "substantial onsite construction or reconstruction, or for the purchase or rental of significant equipment or appurtenances required for the construction or operation of a powerplant or MFBI, *including, but not necessarily limited to, the boiler, and its major components,* * * *" (emphasis added). ERA has also amended the regulations to clarify that the contract, which must have been signed by November 9, 1978 to establish eligibility to request classification, need not have been signed by the person requesting classification but may have been signed by a previous purchaser.

B. Substantial Financial Penalty

ERA received several comments that the 25% test established in the Revised Interim Rule was too rigorous and that other factors need to be considered. ERA has established the 25% test because it is confident that in all instances where this criterion is met there will be a "substantial financial penalty". However, ERA clearly provides in §§ 515.6(a) and 515.13(a) that the failure to meet this criterion will not preclude an ultimate classification as "existing" on financial grounds. In this regard ERA received a comment questioning whether ERA is required by the regulation to consider the additional factors submitted in a request for classification. Sections 515.6(a) and 515.13(a) specifically state that "ERA will take into consideration any financially-related factor which you consider appropriate in reaching its determination. . ."

Several comments suggested that ERA should not base its determination on whether a firm is independent or a member of a large corporate family. It is argued that most subsidiaries operate as though they are financially independent from their corporate parent and their economic viability is determined solely by their separate performance. One commenter additionally suggested we were placing too much emphasis on the statement in the Conference Report accompanying the Act that the effect on the parent company should be considered and that this economic test could foreseeably become one of imminent bankruptcy of the parent company. As the commenter correctly pointed out, the Conference Report clearly provides that ERA is to consider the financial impact of cancelling, rescheduling or modifying the project on the parent company (S. Rep. No. 95-988, 95th Cong., 2nd Sess., p. 70, October 10, 1978). The emphasis placed on the parent company in these regulations is identical to the emphasis asserted in the Conference Report. Furthermore, ERA does not intend this to be a "bankruptcy test" for either the parent company or the subsidiary.

ERA received one comment which suggested that ERA should include as a non-recoverable expenditure any expense made after November 9, 1978, which was necessary to preserve or enhance the salvage value of the unit or for health, environmental or safety reasons. ERA believes that there is merit to this suggestion and feels that if the expenses referred to above were of an involuntary nature and not merely spent to complete the project, they should be considered. This assessment will necessarily have to be made on a case-by-case basis, however. Persons submitting requests for classification should identify these expenditures separately and provide justification as to why they should be considered.

C. Adverse Effect on Electric System Reliability

Several persons commented that ERA's focusing on regional reliability as opposed to the utility's or system's reliability is inappropriate. In addition they felt that a reliability evaluation should include an assessment of other factors such as firmness of purchase power contracts, fuel supply reliability and quantity, federal and state input and environmental considerations. Pursuant to Part 515, ERA will evaluate each powerplant's request claiming an adverse impact on reliability on a case-by-case basis and will allow the submission of whatever evidence the requestor deems appropriate. While the 20% reserve margin test pertains to the electric region, the other evidence you may submit which ERA will consider is not limited to evidence which pertains only to the electric region.

D. Definitions

ERA received several comments suggesting that refinery process heaters should be excluded from the regulations since Congress never intended such units to be within the coverage of the Act. As ERA previously stated in the preamble to Part 501 (Definitions), refinery process heaters normally do not fall within the categories statutorily designated as MFBIs, that is, boilers and certain nonboilers, and as such are exempt from the provisions of FUA (44 FR at 28532, May 15, 1979). To the extent that a refinery process heater functions as a boiler, it will be subject to the provisions of the Act.

Several persons commented that ERA improperly excluded the nonboiler categories in the definition of an "MFBI". The commenters felt this leaves owners and operators of nonboiler MFBI's without the opportunity to seek "existing" facility classification. What the commenters failed to recognize was that Section 202(b)(3) of the Act provides that a prohibition to a new nonboiler only applies to an installation for which construction or acquisition began on or after the date of the publication of the proposed rule or order establishing the prohibition. Section 202(b)(3) further provides that any installation not subject to a prohibition due to the previous sentence is considered to be "existing". Therefore any classification that ERA would provide at this time for a nonboiler MFBI would be premature since no proposed prohibitions have been established with respect to such facilities.

One commenter suggested that ERA's definition of "operational" was too stringent and does not accurately reflect whether a unit is truly operational. ERA has amended this definition to provide that a unit is "operational" if it is "used and useful, has completed its testing phase and is *capable of* producing a product or providing a service on a continuing basis" (emphasis added). ERA believes that to provide any more latitude in this regard would not serve the purposes of the Act.

E. Administrative

ERA received several comments that the administrative procedures established for Part 515 fail to meet the requirements of Section 701 of FUA, the Administrative Procedures Act (APA) and the fundamental protections of the Constitution. The commenters believe ERA must, as a matter of law, provide an opportunity for a public hearing on the record and issue a proposed decision accompanied by specific findings and a statement of the reasons for ERA's determination.

ERA is aware that the administrative procedures contained in Part 515 are not the same as those required by Section 701 of FUA. ERA believes that the informal administrative procedures provided in Part 515 properly advance the purposes of FUA by allowing an expeditious determination with respect to a facility's status under the Act. Moreover, ERA believes that the Part 515 administrative procedures conform to the pertinent provisions of the APA and that they provide the appropriate due process of law protections.

The decisions which ERA expects to reach pursuant to the rules contained in Part 515 are subject to the requirements of Section 553 of the APA unless more formal procedures are otherwise required by statute. ERA does not agree with those comments which assert that the provisions of Section 701 of FUA constitute the statutory requirement for more formal procedures mentioned in the APA.

Section 701(d) of the FUA specifically provides a hearing opportunity for interested persons in the case of any "proposed rule or order . . . imposing a prohibition" or where ERA accepts ". . . any petition for any order granting an exemption. . . ." Although the opportunity for a hearing is mandated by Section 701, the agency actions to which these provisions apply are explicitly restricted to those quoted above. Congress could have applied the provisons of Section 701(d) to all ERA actions taken under FUA, but it did not do so. Indeed, the classification decisions contemplated by Section 103 of FUA are not addressed in Section 701(d).

ERA also disagrees with commenters who assert that denial of a request for classification as an existing unit under the provisions of Part 515 amounts to imposing a prohibition. Denial of a request for classification as an existing unit does not impose any additional prohibition. The Act presumes all powerplants and installations to which Part 515 applies are new unless otherwise classified as existing by ERA pursuant to rules prescribed by ERA. Part 515 describes the manner by which the presumption of status as a new facility may be rebutted. In the event that a requesting person successfully carries the burden of demonstrating the facts required by Part 515, the unit will be classified as existing and thereby relieved of the presumption of "new" status as well as the pertinent prohibitions applicable to new facilities. In the event the requesting person fails to carry his burden, then the statutory presumption and prohibitions remain unaffected.

ERA believes that the public notice and comment provisions of Part 515 are in accord with the requirements of the APA and therefore meet appropriate due process of law requirements without providing an opportunity for oral presentations.

ERA also disagrees with suggestions that the APA and other pertinent provisions of law require ERA to publish a proposed decision in connection with consideration of requests for classification under Part 515.

These final regulations have been amended to provide that requests for classification must be filed within 30 days of the effective date of this Final Rule although § 515.32 provides for an extension of time to file a request upon a showing of good cause. If you file your request before this Final Rule becomes effective, ERA will apply the regulation which results in the more favorable disposition of your request. For requests filed after this Final Rule is effective, ERA will apply the provisions of this Final Rule to your request.

III. Procedural Matters

A regulatory analysis of this Final Rule set forth below, as contemplated by Executive Order No. 12044, is contained within the draft regulatory analysis of the regulation regarding new facilities proposed on November 9, 1978, 43 FR 53974. A final Environmental Impact Statement (FEIS) has been prepared pursuant to the National Environmental Policy Act (NEPA). Both the draft regulatory analysis and the FEIS may be obtained from ERA, 2000 M St., N.W., Washington, D.C. 20461, (202) 634-2170.

This Final Rule has been submitted to the Office of Management and Budget (OMB) for clearance under the provisions of the Federal Reports Act. Any compliance with the data collections provisions of this Final Rule may require revisions or additions as a result of OMB's action.

Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et. seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); E.O. 12009, (42 FR 46267, September 15, 1977).

In consideration of the foregoing, Part 515, Subchapter E, of Chapter II, Title 10 of the Code of Federal Regulations is amended and adopted as a Final Rule effective November 30, 1979.

Issued in Washington, D.C., October 12, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Subchapter E—Alternate Fuels

PART 515—TRANSITIONAL FACILITIES

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq); E.O. 12009, 42 FR 4267.

Transitional Facilities

Subpart A—General Provisions

§ 515.1 Policy.

(a) The Economic Regulatory Administration (ERA) intends to administer the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) relating to transitional facilities in a firm but fair and practical manner. A transitional facility is one which was not operational on April 20, 1977, but for which a contract for its construction or acquisition was signed prior to November 9, 1978, the date of FUA's enactment. ERA will not classify as "existing," transitional facilities which are in the early stages of planning and construction, and which would not incur a substantial financial penalty, an adverse effect upon electric system reliability (for powerplants), or a significant operational detriment (for major fuel-burning installations). These facilities will therefore be considered to be "new." As new facilities, they will be subject to the statutory prohibitions of Title II of FUA, but will have the opportunity to petition ERA for an exemption from those prohibitions. Where a person requesting classification of a transitional facility as "existing" can demonstrate that the facility is in a more advanced stage of construction and would sustain any of the penalties, adverse effects, or detriments identified above, ERA will classify the facility as "existing" in order to avoid disruptive impacts on the facility as well as on the economy at large.

(b) You are eligible to request that ERA classify your transitional facility as "existing" if a contract for the facility's construction or acquisition was signed prior to November 9, 1978. Moreover, you are also eligible to request that ERA classify your transitional facility as "existing" if a contract was signed prior to November 9, 1978, for the reconstruction of your facility (including refurbishment of or addition to the facility) to the extent that the reconstruction equals or exceeds 50 percent of the price of a replacement unit. We base these criteria for eligibility as a transitional facility on the principle that a contract constitutes a commitment, after which time any cancellation, rescheduling, or modification may result in a substantial financial penalty, a significant operational detriment, or an adverse effect on electric system reliability.

(c) We have established milestones whereby facilities will automatically be considered "new" or "existing" without contacting ERA. Where no contract for construction or acquisition of a facility was signed prior to November 9, 1978, the facility is clearly "new." Facilities which were operational, as defined in these regulations, on or before April 20, 1977, are automatically deemed "existing." Individual transitional facilities with a design capability of consuming any fuel at a heat input rate which does not equal or exceed 100 million BTU's per hour, are automatically deemed "existing."

(d) To further facilitate the processing of requests for classification of transitional facilities and to reduce the administrative burden on persons requesting classification and ERA alike, facilities which were completed and title transferred, operational or at a certain stage of construction by designated dates will be classified as "existing" upon certification to ERA and, in some cases, the submission of minimal documentation. Under this approach, powerplants and MFBIs which were completed on or before April 20, 1977 and for which title was transferred to the purchaser on or before April 20, 1977, will be classified as "existing" by ERA. In addition, units which were operational on May 8, 1979 (the effective date of FUA) will be classified as "existing" by ERA. Moreover, MFBIs which are prefabricated boilers and powerplants which are prefabricated boilers or combustion turbines which had been shipped by the manufacturer, or which had their main steam drum in place (for field-erected boilers) by November 9, 1978, will similarly be classified as "existing."

(e) ERA believes that a powerplant or MFBI will incur a "substantial financial penalty" where 25 percent or more of the total projected project cost has been expended or irrevocably committed as of November 9, 1978. In assessing the expenditures or committed costs, however, ERA will exclude outlays which can be used toward the construction of an alternate fuel-fired facility or which may be cancelled. The limitation to nonrecoverable outlays follows from the definitions of new powerplants and MFBIs in Section 103 of the Act. These definitions recognize the extra costs that are incurred in building an alternate fuel-fired plant by cancelling, rescheduling or modifying a partially completed oil or gas-fired plant.

(f) Where these nonrecoverable outlays do not reach 25 percent of the total projected project cost, ERA may consider other financially-related factors presented on a case-by-case basis. The purpose of these additional case-by-case evaluations, where facilities have not expended beyond 25 percent of their total projected project cost, in to permit persons requesting classification to present ERA with full explanations of the financial penalties they believe they may incur, but which are otherwise not properly included in computing the 25 percent test.

(g) If your transitional facility is a powerplant, one of the considerations ERA will employ in reaching a determination applicable to an adverse effect on electric system reliability is whether the cancellation, rescheduling or modification of your proposed powerplant would result in your electric region's reserve margin falling below 20 percent during the 12-month period after you expect your proposed powerplant to begin operation. You may present whatever evidence you deem appropriate to ERA's reaching a determination on your claim of an adverse effect on electric system reliability.

(h) If your transitional facility is a major fuel-burning installation, your unit will be designated "existing" if you demonstrate to ERA that you would incur a significant operational detriment as a result of cancelling, rescheduling, or modifying your facility. In light of the complexity and variety of operational requirements in the MFBI sector, ERA will review these requests for classification on a case-by-case basis.

§ 515.2 Purpose and scope.

(a) *Purpose.* These rules govern requests for classification of transitional facilities by ERA as "existing" facilities subject to the provisions of Title III of FUA, rather than as "new" facilities subject to the provisions of Title II of FUA.

(b) *Application.* This Part applies to all transitional facilities. You are eligible to submit a request to have your transitional powerplant or major fuel-burning installation classified as an "existing" facility, pursuant to this Part, if a contract for the construction or acquisition of your facility was signed prior to November 9, 1978, the date of enactment of FUA.

(c) *ERA determinations.* Based upon the criteria set forth below, and after thorough consideration of the entire administrative record of your formal request, ERA will publish in the **Federal Register** a formal decision either: (1) granting the request, having determined that your installation or powerplant is "existing," or (2) denying the request, having determined that your installation or powerplant is "new." ERA determinations on requests that are received by ERA on or before the effective date of this Final Rule, will be made on the basis of the provisions set forth in the Revised Interim Rule or this Final Rule, whichever would result in a more favorable disposition of your request. Determinations on requests received after the effective date of this Final Rule, will be made on the basis of this Final Rule. These determinations are final Departmental actions.

Subpart B—Electric Powerplants

§ 515.3 Eligibility.

You are eligible to submit a request to ERA to have your transitional facility classified as "existing" if you can demonstrate to the satisfaction of ERA that a contract for the construction or acquisition of the powerplant was signed prior to November 9, 1978.

§ 515.4 Powerplants automatically classified as "new."

If a contract for the construction or acquisition of the powerplant was not signed prior to November 9, 1978, the powerplant is automatically classified as "new" and subject to the provisions of Title II of the Act.

§ 515.5 Powerplants automatically classified as "existing."

(a) Any powerplant which was operational on or before April 20, 1977, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(b) Any powerplant for which a contract for construction or acquisition was signed prior to November 9, 1978, and which does not have a design capability to consume any fuel at a fuel heat input of 100 million BTU's per hour or greater, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(c) Any powerplant for which a contract for construction or acquisition was signed before November 9, 1978, and which was operational on or before May 8, 1979, is automatically classified as "existing" and subject to the provisions of Title III of the Act upon filing with ERA of a certification. This certification must be made by a duly authorized officer of the electric utility which owns, operates or controls the powerplant. This filing will not be deemed by ERA to be a formal request for classification under this Part.

(d) Any powerplant which was completed and for which ownership of the unit was transferred from the manufacturer to a purchaser on or before April 20, 1977 shall be automatically classified as "existing" and subject to the provisions of Title III of the Act upon the submission of the evidence required by § 515.7(a)(3).

(e) Any powerplant for which a contract for construction or acquisition was signed prior to November 9, 1978 and which is:

(1) A prefabricated packaged boiler or a combustion turbine that was shipped by the manufacturer to the user by November 9, 1978 is automatically classified as "existing" upon the submission of a certification to such effect by a duly authorized officer of the electric utility that owns, operates or controls your powerplant and the evidence required by § 515.7(a)(4).

(ii) A field-erected unit, the main stream drum of which was in place by November 9, 1978, is automatically classified as existing upon the submission of a certification to such effect by a duly authorized officer of the electric utility that owns, operates or controls your powerplant and the evidence required by § 515.7(a)(5).

§ 515.6 Powerplants which ERA will classify as "existing."

ERA will classify an eligible powerplant as "existing" if you demonstrate to the satisfaction of ERA that the cancellation, rescheduling or modification of the construction or acquisition of your powerplant would result in a substantial financial penalty or an adverse effect on the electric system reliability.

(a) *Substantial financial penalty.* (1) ERA will take into consideration any financially-related factor which you consider appropriate in reaching a determination on substantial financial penalty. If you demonstrate to the satisfaction of ERA that, as of November 9, 1978, you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." In computing the 25 percent expenditure, you must include only nonrecoverable outlays expended as of November 9, 1978.

Example: You are constructing a facility which can use either petroleum or coal, and the following outlays have been made and are projected:

	Outlays: As of 11/9/78	Outlays: Total projected project cost
Oil handling equipment, including storage	$1,000,000	$2,000,000
Boiler and other equipment	4,000,000	7,000,000

In general, ERA would define a maximum of $1,000,000 as a non-recoverable outlay (oil handling equipment, oil storage) and could probably reduce this amount since certain items would be retained in an alternate fuel-firing system which used oil for startup and ignition. Outlays for the boiler are deemed recoverable, since they could be used in a coal facility, even though you would be required to spend an additional amount for pollution control and coal handling and storage facilities. (You may indicate your assessment of the impact of this additional amount by addressing subparagraph (2)(iii) of this section in your request.)

(2) If you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." If you have expended less than 25 percent under the test set forth above, you may still request classification from ERA. Your request for classification may address, among others, the following factors:

(i) The nonrecoverable outlays you would incur by cancelling, rescheduling, or modifying your current proposed powerplant in order to burn an alternate fuel or fuel mixture;

(ii) The total projected project cost and percentage of completion of the project at November 9, 1978;

(iii) The impact that cancelling, rescheduling, or modifying your present powerplant would have upon your rate base and your ability to continue in business as a sound and financially viable public utility;

(iv) The site at which the facility is located; and

(v) An alternate use for the facility under construction.

(b) *Adversely affecting electric system reliability.*

(1) ERA will make its determination applicable to electric system reliability on a case-by-case basis, after consultation with FERC and the appropriate state authority.

(2) One of the considerations ERA will employ is whether the reserve margin of the electric region in which you propose to locate your powerplant would be reduced to less than 20 percent during the 12-month period after you expect your proposed powerplant to begin operation, assuming your proposed powerplant is not completed. Firm

purchases and sales to or from the electric region will be included in ERA's evaluation. The reserve margin percentage is computed by subtracting the normal peak load expected during the 12-month period from the system's total capacity, including the additional capacity that will be available through interconnection, and dividing the result by the projected normal peak load during the delay.

(3) Notwithstanding paragraph (2) above, if you wish to demonstrate that your own electric utility's ability to provide reliable service will be adversely affected during this period, regardless of circumstances pertaining to your electric region, you may present whatever evidence you deem appropriate.

§ 515.7 Evidence required in support of a request for classification.

(a)(1) You must submit a separate request for classification for each facility at a single site. Each request must be in writing, and must be signed by the duly authorized officer of the company that owns, operates or controls the powerplant. Your request must include:

(i) A complete description of the transitional facility;

(ii) A statement of the date on which the contract for the construction or acquisition of the powerplant was signed and a description of the components or services contracted for; and

(iii) A statement of the date on which your powerplant became or is scheduled to become operational.

(2) ERA may request that you submit copies of any contracts concerned with the construction or acquisition of the powerplant.

(3) If your request is made pursuant to § 515.5(d), to document that the unit was completed prior to April 20, 1977, you must submit a certification from a duly authorized officer of the manufacturer to that effect. To document that ownership was transferred prior to April 20, 1977, you must submit evidence which clearly demonstrates the transfer of ownership.

(4) If your request is made pursuant to § 515.5(e)(1), to document that the unit was shipped by November 9, 1978, you must submit a statement of the date it was shipped by the manufacturer and either a copy of the bill of lading from the shipment of the prefabricated boiler or combustion turbine or a dated photograph of the prefabricated boiler or combustion turbine after it has been set in place.

(5) If your request is made pursuant to § 515.5(e)(2), to document that the main steam drum was in place by November 9, 1978, you must submit a statement of the date it was in place and either a copy of the bill of lading for the shipment of the main steam drum or a dated photograph of the main steam drum after it has been set in place.

(b)(1) If you wish to show that you will incur a substantial financial penalty, your request for classification must include the information listed below:

(i) A statement of the total projected project cost of your transitional facility projected as of November 9, 1978;

(ii) An itemized list of the project expenditures as of November 9, 1978;

(iii) An itemized list of any financial penalties you will incur by cancelling or terminating contracts signed as of November 9, 1978, for the project;

(iv) An itemized list of your recoverable expenditures for the project;

(v) An itemized list of the nonrecoverable outlays for the project; and/or

(vi) Any other relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.6(a), above.

(2) You should provide sufficient detail to enable ERA to evaluate your claim of substantial financial penalty. When providing itemized lists, you may aggregate costs of minor items in a reasonable manner, but ERA may require you to specify these costs if the cost categories are too vague or the costs are substantial.

(3) ERA may request that you submit copies of the sections of the engineering design plan and copies of environmental analyses or their summaries which describe in detail the design specifications, the construction schedule and the estimated engineering and contingency costs of the transitional facility.

(c)(1) If you wish to show an adverse effect on electric system reliability, your request for classification must include:

(i) A description of your own service area and its interconnection with other utilities;

(ii) Projections of peakload for your service area during the period of the delay that would be caused by the cancellation or redesign of the transitional facility;

(iii) The net dependable electrical capacity and peak loads for this service area for the 12 months following the expected operational date of the facility, including interconnections (if you are claiming an adverse impact on reliability during a period after the 12 months, you must provide this data for the period commensurate with the time of your anticipated reliability difficulties);

(iv) Your service area's reserve margin during the 1-year period after you expect your proposed powerplant to begin operation; and

(v) Any other relevant information you feel ERA should consider in reaching its determination.

(2) You should provide sufficient detail to enable ERA to evaluate your claim of an adverse effect on electric system reliability.

(3) ERA will conduct the required regional reliability analysis for your electric region. You are invited to assist ERA by providing the additional projected regional load and generation data needed to evaluate the reliability of your electric region. ERA will utilize its own generation and load projection data base if you do not provide the necessary data.

Subpart C—Major Fuel-Burning Installations

§ 515.10 Eligibility.

You are eligible to submit a request to ERA to have your transitional facility classified as "existing" if you can demonstrate to the satisfaction of ERA that a contract for the construction or acquisition of the installation was signed prior to November 9, 1978.

§ 515.11 Installations automatically considered to be "existing."

(a) Any installation which was operational on or before April 20, 1977, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(b) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978, and which does not have a design capability to consume any fuel at a fuel heat input rate of 100 million BTU's per hour, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(c) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978, and which was operational on or before May 8, 1979, is automatically classified as "existing" and subject to the provisions of Title III of the Act upon filing with ERA of a certification. This certification must be made by a duly authorized officer of the installation. This filing will not be deemed by ERA to be a formal request for classification under this Part.

(d) Any installation which was completed and for which ownership was transferred from the manufacturer to a purchaser prior to April 20, 1977, shall be automatically classified as "existing" and subject to the provisions of Title III of the Act upon the submission of the evidence required by § 515.15(a)(3).

(e) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978 and which is:

(1) A prefabricated packaged boiler that was shipped by the manufacturer to the user by November 9, 1978, is automatically classified as "existing" upon the submission of a certification to such effect by a duly authorized officer of the company that owns, operates or controls your installation and the evidence required by § 515.15(a)(4).

(2) A field-erected unit, the main steam drum of which was in place by November 9, 1978, is automatically classified as existing upon the submission of a certification to such effect by a duly authorized officer of the company that owns, operates or controls your installation and the evidence required by § 515.15(a)(5).

§ 515.13 Installations which ERA will classify as "existing."

ERA will classify an eligible installation as "existing" if you demonstrate to the satisfaction of ERA that the cancellation, rescheduling, or modification of the construction or acquisition of your installation would result in a substantial financial penalty or a significant operational detriment.

(a) *Substantial financial penalty.* (1) ERA will take into consideration any financially-related factor which you consider appropriate in reaching its determination on substantial financial penalty. If you demonstrate to the satisfaction of ERA that you have expended at least 25 percent of the total projected project cost as of November 9, 1978, ERA will classify your installation as "existing." In computing the 25 percent expenditures, you must include only nonrecoverable outlays expended as of November 9, 1978.

Example: You are constructing a facility which can use either petroleum or coal, and the following outlays have been made and are projected:

	Outlays	
	As of 11/9/78	Total projected project cost
Oil handling equipment, including storage	$1,000,000	$2,000,000
Boiler	4,000,000	7,000,000

In general, ERA would define a maximum of $1,000,000 as a nonrecoverable outlay (oil handling equipment & oil storage) and would probably reduce this amount since certain items would be retained in an alternate fuel-firing system which used oil for startup and ignition. Outlays for the boiler are deemed recoverable, since they could be used in a coal fired facility, even though you would be required to spend an additional amount for pollution control and coal handling and storage facilities. [You may indicate your assessment of the impact of this additional amount by addressing subparagraph (2)(iii) of this section in your request.]

(2) If you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." If you have expended less than 25 percent under the test set forth above, you may still request classification from ERA. Your request for classification may address, among others, the following factors:

(i) The nonrecoverable outlays you would incur by cancelling, rescheduling or modifying your current proposed installation in order to burn an alternate fuel or fuel mixture;

(ii) The total projected project cost and percentage of completion of the project at November 9, 1978; and

(iii) The impact that cancelling, rescheduling, or modifying your proposed installation would have upon your ability to continue in business as a sound and financially viable entity. (In the case of a subsidiary company, ERA intends to review the financial effect on the parent company unless you can demonstrate to ERA why this would not be justified).

(b) *Significant operational detriment.* ERA will make its determination under this subsection on a case-by-case basis; however, you should indicate the operational detriment you would have incurred if you had cancelled, rescheduled, or modified your installation to burn an alternate fuel or fuel mixture at November 9, 1978. Your request for classification should address the following factors:

(1) The extent of construction and anticipated start-up date;

(2) The potential impact of the loss of production which could not be rescheduled elsewhere;

(3) The potential impact on employment, including the number and type of jobs lost, excluding those that may be absorbed elsewhere within your parent company; and

(4) The anticipated annual capacity utilization factor of the unit, as well as seasonal or other variations in use.

§ 515.15 Evidence required in support of a request for classification.

(a)(1) You must submit a separate request for classification for each facility at a single site. Each request must be in writing and must be signed by the duly authorized officer of the company that owns, operates or controls the installation. Your request for classification must include:

(i) A complete description of the transitional facility;

(ii) A statement of the date on which a contract for the construction or acquisition of the installation was signed, and a description of the components or services contracted for; and

(iii) A statement of the date on which your installation became or is scheduled to become operational.

(2) ERA may request that you submit copies of any contracts concerned with the construction or acquisition of the installation.

(3) If your request is made pursuant to § 515.12(d), to document that the unit was completed prior to April 20, 1977, you must submit a certification from a duly authorized officer of the manufacturer to that effect. To document that ownership was transferred prior to April 20, 1977, you must submit evidence which clearly demonstrates the transfer of ownership.

(4) If your request is made pursuant to § 515.12(e)(1), to document that the unit was shipped by November 9, 1978, you must submit a statement of the date it was shipped by the manufacturer and either a copy of the bill of lading for the shipment of the prefabricated boiler or a dated photograph of the prefabricated boiler after it has been set in place.

(5) If your request is made pursuant to § 515.12(e)(2), to document that the main steam drum was in place by November 9, 1978, you must submit a statement of the date it was in place and either a copy of the bill of lading for the shipment of the main steam drum or a dated photograph of the main steam drum after it has been set in place.

(b)(1) If you wish to show that you will incur a substantial financial penalty, your request for classification must include:

(i) A statement of the total projected project cost of your transitional facility projected as of November 9, 1978;

(ii) An itemized list of the project expenditures as of November 9, 1978;

(iii) An itemized list of any financial penalties you will incur by cancelling or terminating contracts for the project signed as of November 9, 1978;

(iv) An itemized list of your recoverable expenditures for the project;

(v) An itemized list of the nonrecoverable outlays for the project; and/or

(vi) Any other relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.13(a), above.

(2) You should provide sufficient detail to enable ERA to evaluate your claim of substantial financial penalty. When providing itemized lists, you may aggregate costs of minor items in a reasonable manner, but ERA may require you to specify these costs if the cost categories are too vague or the costs are substantial.

(3) ERA may request that you submit copies of the sections of the engineering design plan and copies of environmental analyses or their summaries which describe in detail the design specifications, the construction schedule and the estimated engineering and contingency costs of the transitional facility.

(c) If you wish to show that you will incur a significant operation detriment, your request for classification should include any relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.13(b), above. You should provide sufficient detail to enable ERA to evaluate your claim of significant operational detriment.

(d) ERA may request any additional evidence it deems necessary to adequately review your request for classification.

Subpart D—Definitions

§ 515.20 Definitions.

(a) All terms defined in this subpart shall apply only to Part 515, Transitional Facilities. These definitions are not applicable to and may differ from the definitions promulgated or to be promulgated under other regulations implementing FUA.

(b) Throughout this Part, the "Act" or "FUA" means the Powerplant and Industrial Fuel Use Act of 1978.

(c) Unless otherwise expressly provided; for purposes of this Part of these regulations, the term:

(1) "Alternate fuel" means electricity or any fuel, other than natural gas or petroleum. The term includes—

(i) Coal;

(ii) Solar energy;

(iii) Petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood and renewable and geothermal energy sources;

(iv) Liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity;

(v) Any fuel derived from an alternate fuel; and

(vi) Waste gases from industrial operations.

(2) "Btu" means British thermal unit.

(3) "Coal" means anthracite, bituminous and sub-bituminous coal, lignite, and any fuel derivative thereof.

(4) "Conference" means an informal meeting, incident to any proceeding, between ERA and any interested person.

(5) "Construction" means substantial construction in terms of an actual and meaningful commitment to building the powerplant or MFBI, and includes more than merely clearing a site or putting in foundation pilings for the unit.

(6) "Contract for construction or acquisition" means a legally-binding agreement or agreements for substantial onsite construction or reconstruction, or for the purchase or rental of significant equipment or appurtenances required for the construction or operation of a powerplant or MFBI, including, but not necessarily limited to, the boiler and its major components, fuel-handling equipment and pollution control equipment. This term shall not include contracts for the purchase of land, site clearance or preparation, or the installation of foundation pilings.

(7) "Duly authorized officer" means the Chief Executive Officer or his designee of a company that owns, operates or controls a facility.

(8) "Duly authorized representative" means a person who has been designated to appear before ERA in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. The appearance may consist of the submission of applications, requests, statements, memoranda of law, other documents, or of a personal appearance, oral communication, or any other participation in the proceeding.

(9) "Electric powerplant" means any stationary electric generating unit, consisting of a boiler, a combustion turbine unit, a generator or a combined cycle unit, which produces electric power for purposes of sale or exchange, and—

(i) Has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater.

(ii) As used herein, the term "electric generating unit" does not include—

(A) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(B) Any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale.

(10) "Electric region"—The following is a list of electric regions for use with regard to this Part. The regions are identified by FERC Power Supply areas as authorized by section 202(a) of the Federal Power Act except where noted.

(i) Each grouping meets one or more of the following criteria:

A. Existing centrally-dispatched pools and hourly power brokers;

(B) Systems with joint planning and construction agreements;

(C) Systems with coordination agreements in the areas of—

(1) Generation reserve and system reliability criteria

(2) Capacity and energy exchange policies

(3) Maintenance scheduling

(4) Emergency procedures for dealing with Capacity or fuel shortages;

(D) Systems within the same National Electric Council (NERC) region with historical coordination policies.

(ii) The Power Supply Areas (PSA's), referred to in the definition of electric regions, were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the 1970 National Power Survey, Vol. I, Pg. I-3-16. In cases where you find an ambiguity in a regional assignment, you shall consult with ERA for an official determination.

(iii) *Electric region groupings.*

	DOE (FERC) power supply areas
(A) Allegheny Power System (APS)	7, except Duquesne.
(B) American Electric Power System (AEP).	Entire AEP System.
(C) New England Planning Pool (NEPOOL).	1, 2.
(D) New York Planning Pool (NYPP)	3, 4.
(E) Pennsylvania-New Jersey-Maryland Interconnection (PJM).	5, 6.
(F) Commonwealth Edison Company.	14.
(G) Florida Coordination Group (FCG).	24.
(H) Middle South Utilities	25.
(I) Southern Company	22, 23.
(J) Gulf States Group	35.
(K) Tennessee Valley Authority (TVA).	20.
(L) Virginia-Carolina Group (VACAR)	18, 21.
(M) Central Area Power Coordination Group (CAPCO).	Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Duquesne Light Company.
(N) Cincinnati, Columbus, Dayton Group (CCD).	Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, Dayton Power and Light Company.
(O) Kentucky Group	19.
(P) Indiana Group	Indiana Utilities except AEP.

	DOE (FERC) power supply areas
(Q) Illinois-Missouri Group (ILLMO) ..	15, 40.
(R) Michigan-Electric Coordinated Systems (MECS).	11.
(S) Wisconsin-Upper Michigan Group (WUMS).	13.
(T) Mid-Continent Area Power Pool..	16, 17, 26, 27, 28.
(U) Missouri-Kansas Group (MOKAN).	29, 24.
(V) Oklahoma Group........................	33, 36.
(W) Texas Interconnected Systems (TIS).	37, 38.
(X) Rocky Mountain Power Pool (RMPP).	31, 32.
(Y) Northwest Power Pool (NWPP) ..	30, 42, 43, 44, 45.
(Z) Arizona-New Mexico Group.........	39, 48 within Arizona.
(AA) Southern California-Nevada......	47, 48 in Nevada and California.
(BB) Northern California-Nevada	46.
(CC) Alaska [non-interconnected systems to be considered separately].	49.
(DD) Idaho-Utah Group	41.

(11) "Electric utility" means any person, including any affiliate, or Federal agency, who sells electric power.

(12) "ERA" means the Economic Regulatory Administration of the Department of Energy.

(13) "Facility" means an electric powerplant or major fuel-burning installation.

(14) "FERC" means the Federal Energy Regulatory Commission.

(15) "Installation" means "major fuel-burning installation."

(16) "Fuel heat input rate" means the hourly fuel feed rate multiplied by the gross heating value of the fuel at 60 degrees F. The rate, expressed in millions of BTU's per hour, measures the maximum capacity of the unit and is not related to the rate of actual use. The fuel input rate also reflects the highest rate which can be attained in the unit among the various rates associated with the different fuel capabilities of the unit.

(17) "Main steam drum" means the drum in the boiler where the process of steam separation occurs.

(18) "Main steam drum in place" means that the main steam drum has been lifted to and hung on the field-erected boiler, so that the main steam drum is blocked or braced in place.

(19) "Major fuel-burning installation," means a stationary unit consisting of a boiler, which—

(i) Has a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 100 million BTU's per hour or greater.

(ii) "Major fuel-burning installation" does not include—

(A) Any electric powerplant; or

(B) Any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to ERA of such use.

(C) Steam generators for crude oil recovery.

(20) "MFBI" means "major fuel burning installation."

(21) "Mixture" when used in relation to fuels used in a unit, means a mixture of petroleum or natural gas and an alternate fuel, or a combination of such fuels used simultaneously or alternately in such unit.

(22) "Nonrecoverable outlays" are those expenditures you have made for your transitional facility, as of November 9, 1978, which could not be used in the construction or operation of a facility to burn an alternate fuel, including any expenditures you would be required to make as a result of cancelling contracts signed prior to November 9, 1978. In determining nonrecoverable outlays, you must select the method which results in the least amount of nonrecoverable outlays. The following items are to be excluded from nonrecoverable outlays:

(i) Reimbursements from selling or salvaging equipment or appurtenances associated with the petroleum/gas boiler system; and

(ii) Expenditures for equipment or appurtenances which can be used elsewhere by the owner or operator of the powerplant or installation.

(23) "Operational" means that a unit is used and useful, has completed its testing phase and is capable of producing a product or providing a service on a continuing basis.

(24) "Person" means—

(i) Any individual corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company;

(ii) Any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States;

(iii) Any agency or instrumentality (including any municipality) thereof; or

(iv) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(25) "Powerplant" means "electric powerplant."

(26) "Reconstruction" means refurbishment or addition to a powerplant or major fuel-burning installation, since April 20, 1977, to the extent that the cost of such refurbishment or addition equals or exceeds 50 percent of the price of a replacement unit.

(27) "Recoverable outlays" are those expenditures you have made for your transitional facility, as of November 9, 1978, which could be used in the construction or operation of a facility to burn an alternate fuel. The following items are to be included as recoverable outlays:

(i) Reimbursements from selling or salvaging equipment or appurtenances associated with the petroleum/gas boiler system; and

(ii) Expenditures for equipment or appurtenances which can be used elsewhere by the owner or operator or the powerplant or installation.

(28) "Request for Classification" means the formal request for classification of a facility as "existing" made to ERA through submission of appropriate forms and other information pertaining to eligibility and evidentiary requirements as stated in these regulations under this Part.

(29) "Total projected project cost" means total expenditures, projected as of November 9, 1978, required to perform the feasibility study, engineering, and labor for the construction of your planned facility, as well as all expenditures required for the purchase of the boiler and/or nonboiler and all of its components, fuel-handling equipment, pollution control equipment, and other appurtenances necessary for the construction and operation of the facility. In calculating the total projected project cost, expenditures for marketing studies and land acquisition must be excluded.

(30) "Transitional Facility" means a facility which was not operational on April 20, 1977, but for which a contract for the construction or acquisition was signed prior to November 9, 1978.

(31) "Turbine generator or combustion turbine generator" means an electric power-generating unit that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of any fuel, with an electric power generator driven by the engine.

Subpart E—Administrative Provisions

§ 515.25 Purpose and scope.

This subpart establishes the general procedures that are applicable to this Part.

§ 515.26 Notice and public comment.

When ERA receives your properly filed request for classification under this Part, it will publish a notice in the **Federal Register.** ERA will provide in the notice a period of no less than 21 days for interested persons to file written data, views or arguments. ERA will not provide an opportunity for a public hearing.

§ 515.27 Conferences.

(a) You may file a written request for a conference with ERA regarding your request for classification. The request must be filed at the address provided in

§ 515.35. ERA in its discretion will decide whether to hold a conference.

(b) Actual notice of the time, place, and nature of the conference will be provided to the person who requested the conference. ERA will determine who may attend a conference, but a conference will generally include only the representative of the person requesting the conference, government representatives, and other persons requested by the person requesting the conference.

(c) When ERA convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. You may submit documentary evidence at the conference. ERA will not normally have a transcript of the conference prepared but may do so at its discretion. However, a summary of major points discussed will be prepared by ERA and placed in the public record with confidential material deleted.

(d) Because a conference is solely for the exchange of views incident to a request for classification, ERA will not prepare a transcript, issue a final report or finding unless ERA in its discretion determines that it would be advisable.

§ 515.28 Appearance before ERA.

(a) A person may participate in any proceeding described in this Part on his own behalf or by a duly authorized representative. Any request for classification filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative. Falsification of the certification will subject the person to the sanctions stated in 18 U.S.C. 1001.

(b) ERA may deny, temporarily or permanently, the privilege of participating in conferences, including oral presentations, to any individual who is found by ERA:

(1) To have made false or misleading statements, either orally or in writing;

(2) To have filed false or materially altered documents, affidavits or writings;

(3) To lack the specific authority to represent the person seeking an ERA action; or

(4) To have disrupted or to be disrupting a proceeding.

§ 515.29 Computation of time.

(a) *Days.* (1) When ERA computes time in days under these regulations, ERA will not include the day of the act (or default) from which a period of time begins to run. ERA will include the last day of the period, unless it is a Saturday, Sunday or Federal legal holiday, in which case the period runs until the end of the next normal working day that is not a Federal legal holiday.

(2) ERA shall exclude Saturdays, Sundays or intervening Federal legal holidays from its computation of time when the period of time allowed or prescribed in the regulations is 7 days or less.

(b) *Additional time after service by mail.*

Whenever ERA serves by mail decision, notice, interpretation or other document, which may specify a time period for you to perform an act, refrain from performing an act, or commence a proceeding, you may add 3 days to the period prescribed.

§ 515.30 Service.

(a) ERA will serve all decisions personally or by certified mail unless otherwise provided in these regulations. All other documents will be sent by ERA by first class mail.

(b) ERA will consider service upon your duly authorized representative to be service upon you.

(c) Service by mail is effective upon mailing. ERA will consider official United States postal receipts from certified mailing as *prima facie* evidence of service.

§ 515.31 General filing requirements.

(a) *Where to submit.* You must file your request for classification with ERA at the address provided in Section 515.35.

(b) *When to submit.* Submit your request for classification under the provisions of this Part within 30 days after the effective date of this Final Rule.

(c) *Number of copies.* You should submit four copies of your request for classification.

(d) *Completed filing.* (1) Your request for classification is considered to be filed when you have submitted four copies of your request and any required supporting documentation, and it has been accepted by ERA. If for any reason your request for classification is not acceptable, ERA will notify you within 42 days (6 weeks) from the date of receipt of any deficiencies or defects contained in your request.

(2) If ERA requests other documents or additional information from you, these will be considered to be filed upon receipt unless ERA advises you to the contrary within a reasonable time.

(e) *Signing and attestation.* (1) If you file a request for classification under this Part on behalf of a company or corporation, a duly authorized official of that company or corporation must attest in writing as to the accuracy of all of the facts and statements contained in that request.

(2) If you file a request for classification under this Part on behalf of a subsidiary of a company or corporation, a duly authorized official of both the controlling or parent company or corporation and its subordinate or subsidiary company or corporation must attest in writing as to the accuracy of all facts and statements contained in that request.

(3) If you file a request for classification under this Part on behalf of an entity other than a company or corporation, a duly authorized official of that entity must attest in writing as to the accuracy of all of the facts and statements contained in that request.

(4) All requests, comments, attestations or other documents filed under this Part by a duly authorized representative, as defined by § 515.20(c)(8), must contain the written attestation by that person that he is a duly authorized representative and state the basis for his authority.

(f) *Labeling.* You should clearly label any request for classification or other document that you file with ERA, as "Request for Classification as an Existing Facility" both on the document and on the outside of the envelope in which the document is transmitted.

(g) *Obligation to supply information when you file a request for classification, and other documents relevant thereto.* You are under a continuing obligation during the proceeding to provide the ERA with any new or newly discovered information concerning significantly changed circumstances relevant to the facility.

(h) *Request for confidential treatment.* (1)(i) If you wish to file a document with ERA claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 as amended) or is otherwise exempt by law from public disclosure, and if you wish to request ERA not to disclose such information, you must comply with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004 (44 FR 1908, January 8, 1979).

(2) ERA retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by ERA to deny such claim, in whole or in part, and an opportunity to respond will be given to the person claiming confidentiality of information no less than 7 days prior to the public disclosure of such information.

(3) This subsection does not apply where information is being submitted on an ERA form which contains its own instructions as to requests for

confidential treatment of information provided.

(4) Each request for ERA action must be submitted as a separate document, even if the request deals with the same or a related issue, act or transaction, or is submitted in connection with the same proceeding.

§ 515.32 Extension of time.

ERA may, in its discretion, provide an extension of time to file a request for classification if you can show good cause for the extension. You should submit your request for an extension within 30 days after the effective date of this rule.

§ 515.33 Effective date of decision.

Any decision issued by ERA under this Part is effective on the date issued against all persons having actual notice of it. Such decision is deemed to be issued on the date it is signed by an authorized representative of ERA, unless the decision or other determination states otherwise.

§ 515.34 Order of precedence.

If there is any conflict or inconsistency between the provisions of this subpart and any other provision of this Part, the provisions of this subpart shall contol as it relates to classifications of Transitional Facilities. ERA determinations on requests for classification that are received by ERA on or before the effective date of this Final Rule shall be made on the basis of the Revised Interim Rule, or upon this Final Rule where the application of the Final Rule would result in a more favorable disposition of your request. For requests made after the effective date of this rule ERA shall apply the provisions of this Final Rule.

§ 515.35 Addresses for filing documents with the ERA.

All requests, reports, ERA forms, written communications or other documents are to be filed with the Assistant Administrator for Fuels Conversion, Economic Regulatory Administration, Attention: Office of Public Hearing Management, 2000 M Street, N.W., Washington, D.C., 20461.

§ 515.36 Office of public information.

The Office of Public Information (2000 M Street, N.W., Washington, D.C., Room B-110) is available for public inspection of documents and copying of the following information:

(a) A list of all persons who have filed a request for classification for designation as existing facilities.

(b) Each decision on a request for classification which will contain a statement setting forth the relevent facts and legal basis of each decision, with confidential information deleted, as well as written comments received from interested persons in connection with a request.

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