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GENERAL ACCOUNTING OFFICE

4 CFR Part 51

Authorization of Administrator, GSA, To Prescribe Transportation-Related Forms and Procedures

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This amendment to Part 51 of Title 4, Code of Federal Regulations, reflects our decision, B-198137, June 3, 1982, authorizing the Administrator, General Services Administration, to prescribe transportation-related forms and procedures without consultation with the General Accounting Office. The reason for this amendment is to facilitate the Administrator's transportation audit.

EFFECTIVE DATE: November 10, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel Billard, Attorney-Adviser, Office of General Counsel, General Accounting Office, 441 G Street, NW., Washington, D.C., Telephone 202-275-5477.

SUPPLEMENTARY INFORMATION:

List of Subjects in 4 CFR Part 51

Accounting, Authority delegations, Transportation.

PART 51—[AMENDED]

Therefore, § 51.2 of Title 4 of the Code of Federal Regulations is revised as follows:

§ 51.2 Standard forms and procedures.

In connection with the audit of payments for transportation services furnished for the account of the United States and the adjustment of claims pertaining thereto, the Administrator, General Services Administration, may prescribe standard forms and procedures without consultation with the General Accounting Office, except

that the prescription thereof is subject to the uniform standards and procedures necessary to permit performance of the discretionary function vested by statute in the Comptroller General and other uniform fiscal requirements deemed necessary, as prescribed in 4 CFR Part 52.

Milton J. Socolar,

Acting Comptroller General of the United States.

[FR Doc. 82-30849 Filed 11-9-82; 8:45 am]

BILLING CODE 1610-01-M

4 CFR Part 75

Standardized Fiscal Procedures; Technical Amendments

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule provides technical amendments to § 75.1 of Title 4, Code of Federal Regulations, by removing references to repealed provisions and substituting a reference to the current provisions relating to certificates on transportation bills. This change was made necessary as a result of the transfer from this Office to the General Services Administration of the authority to conduct passenger and freight transportation services audits and to issue regulations relating thereto. The substituted provisions are those which have been issued by GSA.

EFFECTIVE DATE: November 10, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel Billard, Attorney-Adviser, Office of General Counsel, General Accounting Office, 441 G Street, N.W., Washington, D.C., telephone 202-275-5477.

SUPPLEMENTARY INFORMATION: Prior to October 12, 1975, the General Accounting Office, incident to performance of the transportation audit function, was responsible for regulations dealing with the presentation of transportation bills by carriers and other parties. Those regulations were published in Chapter 1, Subchapter D, Title 4 of the Code of Federal Regulations. The General Accounting Office Act of 1974, Public L. 93-604, 88 Stat. 1960, amended section 322 of the Transportation Act of 1940, 31 U.S.C. 244 (Supp. III 1979) by transferring the transportation rate audit function from the General Accounting Office to the General Services Administration,

effective October 12, 1975. On that date, the responsibility to promulgate regulations relating to transportation bills was also transferred to the General Services Administration, and those regulations are published in Chapter 101 of Title 41, Code of Federal Regulations.

List of Subjects in 4 CFR Part 75

Accounting, Government contracts, Transportation.

PART 75—[AMENDED]

Therefore, paragraph (a) of § 75.1, 4 CFR, is revised as follows:

§ 75.1 Contractors' and vendors' certificates.

(a) The General Accounting Office no longer requires that a certificate as to correctness and nonpayment be executed on the bills and invoices of contractors and vendors, with the exception that carriers, or other corporations, agencies, or persons furnishing transportation and accessorial services to the Government must continue to execute the certificates as provided in Chapter 101, Part 41 of Title 41, Code of Federal Regulations. Pending the eventual elimination of the contractors' and vendors' certificates from all other standard voucher forms, the certificates on such other forms need no longer be executed. However, the elimination of this requirement does not dispense with the necessity for the specific certification of facts required by certain contracts.

Milton J. Socolar,

Acting Comptroller General of the United States.

[FR Doc. 82-30848 Filed 11-10-82; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Revision of User Fees for Cotton Classification Service to Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rulemaking.

SUMMARY: This action finalizes the Interim Final Rule published at 47 FR

30963 on July 16, 1982 which revised the user fees for cotton classification services to producers. The Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357) contains amendments to the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471-476) which direct the Secretary of Agriculture to provide cotton classification services to producers and recover, as nearly as practicable, the costs of providing such services including administrative and supervisory costs through the imposition of a user fee. An overall increase in the fees is necessary to recover the projected costs of such services to producers.

EFFECTIVE DATE: December 10, 1982.

FOR FURTHER INFORMATION CONTACT:

Lloyd R. Frazier, Chief, Marketing Services Branch, AMS, USDA, Washington, D.C. 20250, (202) 447-2147.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under the USDA procedure established in accordance with Executive Order 12291 of February 17, 1981, and has been classified "non-major" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator for Marketing Program Operations, Agricultural Marketing Service (AMS), has determined that this action will not have a significant impact on a substantial number of small business entities as (i) cotton classification services will continue to be provided to producers; (ii) the revised fees will be imposed upon the producers who receive the services; and (iii) cotton classification is not mandatory.

The Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357) amended section 3a of the Cotton Statistics and Estimates Act, 7 U.S.C. 473a, to require that user fees shall be charged for the classification of producer cotton for fiscal years 1982, 1983, and 1984. This legislation directed the Secretary to set the user fee at a level that when combined with the proceeds from the sale of samples submitted for classification would recover, as nearly as practicable, the cost of the service provided, including the administrative and supervisory costs. The Secretary was also directed to take necessary action to insure that the Government cotton classification system continues to operate to provide an official quality description for the United States Cotton crop. The fee for classification of producers cotton was set at 60 cents per sample (46 FR 48113-48115).

Revisions in user fees for cotton classification services to producers were implemented by an Interim Final Rule published at 47 FR 30963 on July 16,

1982. Since the harvesting of the 1982 cotton crop was begun in mid-July, it was necessary to make the revisions effective immediately in order to insure that uniform fees would be paid by all participating growers during the 1982 cotton season. The Department accepted public comment for 60 days following publication of this rule. Only one comment was received and it did not demonstrate a need for revision of these amendments.

The classification fee to producers was increased from the initial charge of 60 cents to 67 cents per sample. The increase in the fee is necessary due to the following conditions: Operating costs for providing classification services to producers have increased. A 4.8 percent increase in salaries as well as increases in expenditures for rent, utilities, communications, supplies and materials have had a significant impact on these costs; (2) anticipated volume of cotton to be classed in FY 1983 is substantially below FY 1982 classings. The classing cost per sample is determined largely by the volume of classings since a large percentage of operational costs are fixed. Fixed costs include full-time salaries, building rents, utilities and equipment which cannot be adjusted in years of reduced cotton production and smaller classing volumes. The latest information available to the Department indicates that classings in fiscal year 1983 are now estimated at 10.8 million samples compared with classings of 14.8 million in fiscal year 1982. While this estimate is 1.2 million samples below the estimate stated in the supplementary information section of the interim final rule, no further change in the fees is deemed necessary at this time because the reduction does not change the underlining fee analysis developed to establish the fees so as to warrant any further changes; (3) a smaller volume of baled loose samples which are sold and used to defray a portion of the classing costs.

In setting the fee, a number of cost and revenue projections were made on the basis of limited information. These include: (1) The size of the 1982 cotton crop, (2) the percentage of the 1982 crop for which classification service will be requested, (3) the volume of baled samples to be sold and the price to be received therefor, and (4) the ability to collect classing fees. In recognition of these uncertainties, an adjustment in the per sample classing fee could become necessary during the year.

The fee for issuance of a new memorandum of classification at the request of the owner of the cotton for the business convenience of the owner

without the reclassification of such cotton was increased from \$1.80 to \$1.90 per sheet due to increased costs of providing this service.

The fee for a review classification was increased from \$1.00 to \$1.05 per sample. In order to avoid a policy that could encourage the unnecessary mutilation of cotton bale packaging by repeated resampling of bales when multiple classifications are desired, the Department will return the samples submitted for review classification if the producer so requests. To defray the costs of handling and returning these samples and to account for the loss in revenue which would have defrayed a portion of the costs of the review classification if the samples had been sold as baled loose cotton, a fee of 25 cents per sample will be charged for those samples returned at the request of the producer. This provision adheres to the policy of the Joint Cotton Industry's Bale Packaging Committee which represents all segments of the United States cotton industry and was formed to promote the improved condition and hence the marketability of United States cotton bales as they pass through marketing channels.

List of Subjects in 7 CFR Part 28

Classification, Cotton, Grades, Micronaire, Samples, Staples.

Accordingly, those sections of 7 CFR Part 28, as amended by the Interim Final Rule (47 FR 30963), are made final without change, and are set forth below:

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

1. Section 28.909 is amended by revising paragraph (b) to read as follows:

§ 28.909 Costs.

* * * * *

(b) The Division will periodically bill producers or the agents designated by the producers for the cost of classification. The cost for cotton classification service to producers is 67 cents per sample.

2. Section 28.910 is amended by revising paragraph (b) to read as follows:

Classification

§ 28.910 Classification of samples and issuance of memoranda.

* * * * *

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of

such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be \$1.90 per sheet.

3. Section 28.911 is revised to read as follows:

§ 28.911 Review classification.

A producer may request one review classification for each bale of eligible cotton. The fee for review classification is \$1.05 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to §§ 28.20-28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instruction issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds of the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

(Sec. 10, 42 Stat. 1519, Sec. 3c, 50 Stat. 62; 7 U.S.C. 61, 473c, and Sec. 156, 95 Stat. 357, unless otherwise noted)

Dated: November 4, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-30919 Filed 11-9-82; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 82-083]

Restrictions on Importation of Horses From Sweden; Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document extends to Sweden the prohibitions previously placed on the importations into the United States of certain horses from or

that have been in countries affected with contagious equine metritis (CEM). This action is necessary to protect the livestock of the United States from such disease.

DATES: Effective date: The foregoing amendment shall become effective November 3, 1982, except for horses then in transit to the United States from Sweden (i.e., loaded aboard a commercial carrier and en route to the United States).

Comments must be received on or before January 10, 1983.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, 6505 Belcrest Road, Federal Building, Room 870, Hyattsville, MD 20782.

All written submissions made pursuant to this interim rule will be made available for public inspection at the Federal Building, Room 870, Hyattsville, MD, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Dr. Mark Dulin, USDA, APHIS, VS, 6505 Belcrest Road, Federal Building, Room 818, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This action has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum 1512-1, and has been determined to be not a "major rule." The Department has determined that this rule will have an annual effect on the economy of less than \$100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The emergency nature of this action makes it impractical for the agency to follow the procedures in Executive Order 12291 with respect to this action.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291.

Dr. G. J. Fichtner, Director, National Program Planning Staffs, USDA, APHIS, VS, has determined that an emergency situation exists which warrants publication without opportunity for a

public comment period on this interim action because importation of horses from Sweden, a country affected with contagious equine metritis (CEM), must be restricted in order to protect the livestock of the United States from the introduction and dissemination of CEM.

Pursuant to the Administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency action are impracticable and contrary to the public interest; and good cause is found for making this emergency action effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document, and this emergency action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Additionally, Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because only about 150 horses have been imported into the United States from Sweden during fiscal year 1982, out of about 30,000 horses imported into the United States. To the best of our knowledge, through the years the number of small entities involved in the importation of horses has been extremely limited because of factors such as the number of animals sold; stallion fees ranging from \$5,000 to \$50,000; stallions syndicated up to \$32,000,000 and the international operations involved. The average cost to import a horse from overseas is from \$5,000 to \$7,000, including preembarkation testing and treatment, the cost of transportation and post entry quarantine.

Background

On September 9, 1977 (42 FR 45895, September 13, 1977), a prohibition was placed on the importation into the United States of certain horses from England, Ireland, and France and the importation into the United States of certain horses that have been in such countries within the 60 days immediately preceding their export to the United States because of the existence of CEM in such countries. On September 16, 1977 (42 FR 48327-48328, September 23, 1977), the prohibition was extended to Australia and all of the United Kingdom (England, Scotland, Northern Ireland, Wales, and Isle of

Man); on November 30, 1978 (43 FR 56876-56877, December 5, 1978), it was extended to include Belgium and the Federal Republic of Germany; on October 5, 1979 (44 FR 58896-58897, October 12, 1979), it was extended to include Italy; on July 1, 1980 (45 FR 45888-45889, July 8, 1980), it was extended to include Japan; on July 14, 1981 (46 FR 37240-37241, July 20, 1981), it was extended to include Denmark; and on August 25, 1981 (46 FR 43650-43651, August 31, 1981), it was extended to include Austria.

On December 8, 1977 (42 FR 63384-63385, December 16, 1977), an amendment extended the specified period as a condition for entry of such horses which have been in countries infected with CEM listed under § 92.2(i) of Title 9, Code of Federal Regulations, from 60 days to 12 months. This action was taken to protect the livestock of the United States against the introduction and dissemination of CEM, a communicable disease of horses, into the United States. CEM has now been found to exist in Sweden, and prohibitions on the importation of certain horses from or that have been in that country within 12 months immediately preceding their export to the United States are hereby placed in effect. The same restrictions that now apply to horses from Australia, Austria, Belgium, Denmark, Ireland, Italy, Japan, Federal Republic of Germany, France, and the United Kingdom (England, Scotland, Northern Ireland, Wales, and Isle of Man) are hereby placed on the importation of certain horses from or that have been in Sweden.

List of Subjects in 9 CFR Part 92

Imports, Livestock and livestock products, Quarantine, Transportation, Contagious equine metritis (CEM).

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended by revising paragraph (i)(1) to read as follows:

§ 92.2 General prohibitions; exceptions.

(i)(1) Except as provided in paragraph (i)(2) of this section notwithstanding the other provisions of this part concerning the importation of horses into the United States, the importation of all horses from the following listed countries and the

importation of all horses which have been in any such country within the 12 months immediately preceding their export to the United States is prohibited because of the existence of CEM in such countries: Australia, Austria, Belgium, Denmark, Ireland, Italy, Japan, Federal Republic of Germany, France, Sweden, and the United Kingdom (England, Scotland, Northern Ireland, Wales, and Isle of Man).

(Sec. 2, 32 Stat. 792, as amended; secs. 4 and 11, 76 Stat. 130, 132 (21 U.S.C. 111, 134c, 134f); 7 CFR 2.17, 2.51, 371.2(d))

Comments submitted should bear a reference to the date and page number of this issue in the Federal Register.

Done at Washington, D.C., this 3rd day of November 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-30846 Filed 11-9-82; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts, 501, 504, and 506

[Docket Nos. ERA-R-82-02, ERA-R-81-14]

Powerplant and Industrial Fuel Use Act of 1978; Final Rules for Existing Facilities

AGENCY: Energy Department.

ACTION: Final rules.

SUMMARY: The Department of Energy (DOE) is issuing revisions to its final rules implementing Title III of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") to conform them to current DOE policy to not issue involuntary prohibition orders to existing major fuel burning installations (MFBI's) and to delete the regulations implementing the exemptions to prohibition orders for both MFBI's and existing electric powerplants. Included in these final rules are revisions to 10 CFR Part 501, Administrative procedures and sanctions, 504, Existing powerplants, and 506, Existing major fuel burning installations, of DOE's rules implementing FUA. These rules include provisions which were proposed on May 15, 1982, and corrected on June 10, 1982. An interim rule, 10 CFR 504.6, which was published on April 21, 1982 is adopted as final.

EFFECTIVE DATE: December 10, 1982.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Fuels Conversion Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, 1000 Independence

Avenue, SW., Room GA-093, Washington, D.C. 20585, (202) 252-8678

Allan J. Stein, Office of the General Counsel, Department of Energy, Room 6B-178, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2967.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Comments
- III. Procedural Matters

I. Background

On June 9, 1981, DOE issued a notice of proposed rulemaking (46 FR 31216 (June 12, 1981)) to simplify the administrative procedures and exemption criteria applicable to owners or operators of new and existing powerplants and MFBI's subject to the prohibitions of FUA. These rules, as applicable to the new facilities regulatory program under FUA, were adopted in final form on November 30, 1981 (46 FR 59872 (December 7, 1981)). Final rules applicable to existing facilities were not promulgated at that time because Section 1021 of the Omnibus Budget Reconciliation Act (Pub. L. 97-35) (OBRA), enacted in August, 1981, substantially amended section 301 of FUA, relating to the prohibitions applicable to existing electric powerplants. Specifically, under the new section 301, the so-called "off gas" prohibitions of FUA were deleted and the prohibition order process was substantially amended. In the preamble to those final rules DOE stated that it would soon propose rules applicable to existing facilities to reduce unnecessary regulatory burdens for owners and operators of such facilities.

On November 27, 1981, DOE issued a notice proposing to revise its final rules in 10 CFR Parts 500, 501, and 504 to implement the OBRA amendments to Title III of FUA, which were applicable to existing electric powerplants. DOE adopted these proposals as final rules on April 7, 1982 (47 FR 17037 (April 21, 1982)). At same time, DOE issued revisions to 10 CFR 504.6 ("Prohibitions by order (case-by-case)") in interim final form; allowing time for additional public comments on that section. The interim final rule set forth amendments to the regulatory criteria (financial feasibility and technical capability) for DOE's issuance of prohibition orders to existing powerplants electing continued coverage under the former section 301 of FUA pursuant to procedures found at 46 FR 48118 (October 1, 1981), as well as existing MFBI's.

On May 13, 1982, DOE proposed to revise further its final rules implementing Title III of FUA, to remove all substantive and procedural regulations applicable to existing MFBI's, and remove exemption provisions applicable to existing powerplants (47 FR 22365 (May 24, 1982)) ("NOPR"). A technical correction to these proposals was issued on June 1, 1982 (47 FR 25153 (June 10, 1982)). As described in the NOPR, these proposals reflected the OBRA amendments to FUA concerning the prohibition order process for powerplants, and the implementation of DOE's announced policy of not issuing involuntary prohibition orders to existing MFBI's under section 302 of FUA. As noted in the NOPR, the existing facility rules (45 FR 53682 (August 12, 1980); 44 FR 43176 (July 23, 1979)), would remain in effect for any party to a proposed or final prohibition order issued under section 302 or the former section 301 of FUA.

The comment period on the NOPR, as extended, expired on July 26, 1982. The comment period on the interim final rule, as extended, expired on June 21, 1982. Most of the comments received by DOE strongly endorsed the content of these rules. All comments received by DOE have been considered in promulgating these final rules. Comments recommending revisions to the NOPR and/or the interim final rule are addressed in Section II, *infra*.

II. Comments

Several commenters requested that DOE's removal of its rules governing prohibition orders and exemptions for existing MFBI's be accompanied by a "legally binding commitment" to refrain from the issuance of such orders until new rules are promulgated. In the event that DOE chose not to provide such a commitment, one commenter favored the alternative of retention of the existing criteria so as to establish more stringent requirements for DOE's issuance of involuntary orders to MFBI's.

On January 29, 1981, the President's Task Force on Regulatory Relief was established to "[R]educe the burdens of existing and future regulations * * * and insure well reasoned regulations * * * [Executive Order No. 12291]. Consistent with this objective, DOE's proposal to remove its rules implementing the issuance of exemptions under Title III, Subtitle B of FUA and DOE-initiated prohibition orders under section 302 of FUA to existing MFBI's, conforms to its announced policy of not issuing or finalizing involuntary prohibition orders to existing MFBI's until and unless new

procedural and substantive requirements are adopted as rules in accordance with the applicable procedural and substantive requirements of law. In response to the foregoing comments, DOE has herein formalized this policy in a new section added to these final rules, 10 CFR 501.50. Further, in response to requests by the commenters that any adoption of new rules in the future be preceded by certain notice and hearing requirements, DOE considers that the "applicable procedural and substantive requirements of law" provide in this instance, at a minimum, notice, reasonable opportunity for public comment, and reasoned consideration of all comments submitted.

Several commenters expressed concern that removal of DOE's rules for existing MFBI's would preclude owners or operators of MFBI's from voluntarily seeking prohibition orders under section 302 of the Act. This is not the case.

In its May 24, 1982 NOPR, DOE proposed to delete the specific regulatory authority for MFBI-initiated prohibition orders in 10 CFR 501.51(d), together with its proposal to delete criteria and procedures applicable to any such orders. Rescission of these rules was proposed because, in the three years since FUA became effective, only one prohibition order was ever issued to a non-federal government existing MFBI and that was subsequently rescinded. It was felt that the proposal to remove these historically unused rules would be consistent with the aim of eliminating unnecessary regulations.

In response to the comments on this issue, however, DOE is retaining pertinent portions of 10 CFR 501.51(d), applicable to requests for initiation of prohibition order proceedings. Exercise of the prohibition order authorities in section 302 of the Act is discretionary with DOE, and DOE, to the extent funds are available for this purpose will, upon the request of the owner or operator of an existing MFBI, initiate prohibition order proceedings pursuant to 10 CFR 501.51(d).

Should any owner or operator of an MFBI hereinafter request initiation of a prohibition order proceeding, ERA will evaluate such request on a case-by-case basis. In making this evaluation, DOE will use as guidance the procedures and substantive criteria applicable to certifying electric powerplants (10 CFR Parts 501 and 504). This practice comports with DOE's determination to implement parallel statutory standards for MFBI and powerplant orders in a parallel regulatory manner (47 FR 17039-17040 (April 21, 1982)). In any such

proceeding, applicable procedures would be agreed to by DOE and the MFBI owner. Owners or operators of MFBI's seeking clarification of their rights and responsibilities under this authority may request a conference with DOE pursuant to 10 CFR 501.32.

Finally, several comments were addressed to the interim final rule, 10 CFR 504.6, as follows:

(1) One commenter, stating that a 25 percent derating does not necessarily constitute a "substantial" derating, recommended that DOE consider *all* deratings in excess of 10 percent on a case-by-case basis. This comment addresses an issue in the final rules under FUA (45 FR 53698 (August 12, 1980)) which was not proposed to be revised by DOE, and is therefore outside the scope of this rulemaking.

(2) One commenter recommended that the financial feasibility standards be broadened so as to include consideration, not only of whether a firm has the ability to obtain capital to finance the conversion without violating legal restrictions on its ability to raise debt or equity capital, but also of dilution of shareholder equity, a utility's ability to raise debt capital on reasonable terms, and maintenance of a utility's credit rating.

As noted by the commenter, the final rules, which incorporated the capital unavailability standards of 10 CFR § 503.35, currently permit consideration of dilution of shareholder equity and prevention of an unreasonably adverse impact on a utility's credit rating (45 FR 53698 (August 12, 1980); 47 FR 15315 (April 9, 1982)). DOE agrees that these are considerations appropriate to an evaluation of the financial feasibility of a conversion, and has reinstated this language directly into 10 CFR § 504.6 of these final rules.

III. Procedural Matters

A. *Section 102 of the National Environmental Policy Act (NEPA).* DOE has determined that the removal of the prohibition order and exemption provisions implemented herein, including finalization of its interim final rule, 10 CFR 504.6, will not change the *status quo* and, therefore, is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. Accordingly, the preparation of an Environmental Impact Statement for these final rules is not required.

B. *Executive Order No. 12291.* DOE has determined that the rules adopted herein in final form are not major rules under Executive Order No. 12291, which requires the preparation of a Regulatory

Impact Analysis for major rules. These final rules will not be likely to result in an annual effect on the economy of \$100 million or more. DOE foresees no major increase in costs or prices for consumers, industries, geographic regions or Federal, state or local government agencies. DOE does not consider it likely that these final rules will result in significant adverse effects on competition, employment, investment, or productivity. Therefore, no Regulatory Impact Analysis is required. These final rules were submitted to the Office of Management and Budget (OMB) at least 10 days prior to their publication.

C. Regulatory Flexibility Act. In its May 13, 1982 notice of proposed rulemaking (47 FR 22365, 22366 (May 24, 1982)), DOE certified that its proposals would not negatively impact firms that are "small entities" within the meaning of the Regulatory Flexibility Act. No comments were received concerning this certification. Accordingly, DOE certifies that these final rules will not negatively impact firms that are "small entities" within the meaning of the Regulatory Flexibility Act. Therefore, DOE is not required to publish a final regulatory flexibility analysis pursuant to section 603 of that Act.

List of Subjects

10 CFR Part 501

Administrative practice and procedure, Business and industry, Electric powerplants, Energy conservation, Natural gas, Petroleum.

10 CFR Part 504

Business and industry, Electric powerplants, Energy conservation, Natural gas, Petroleum.

10 CFR Part 506

Business and industry, Electric powerplants, Energy conservation, Natural gas, Petroleum.

(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.*); Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); Executive Order No. 12009 (42 FR 46267 (September 15, 1977)))

Issued in Washington, D.C. on October 28, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

In consideration of the foregoing, Parts 501, 504, and 506, Subchapter E, "Alternate Fuels" of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. By amending the table of contents for Part 501 by adding § 501.50:

Subpart E—Prohibition Rules and Orders

Sec.

501.50 Policy

1a. By revising §§ 501.31(b) and 501.33(b) of Subpart C to read as follows:

§ 501.31 Written comments.

(b) *Existing facilities.* Except as may be provided elsewhere in these regulations, ERA shall provide a period of at least 45 days for submission of written comments concerning a proposed prohibition rule or order or a petition for a permit. In the case of a proposed prohibition rule or order issued to an existing electing powerplant, ERA shall also provide for a period of at least 45 days for submission of written comments concerning a Tentative Staff Analysis. This period shall commence on the day after publication of the Notice of Availability of the Tentative Staff Analysis in the Federal Register. In the case of prohibition order proceedings for certifying powerplants under section 301 of FUA, as amended, ERA shall provide a period of at least 45 days, beginning the day after the Notice of Acceptance of certification is published, for submission of written comments concerning the certification and ERA's proposed prohibition order, and requests for public hearings. Prohibition order proceedings under section 301, as amended by OBRA, will have only one period of 45 days, since no Tentative Staff Analysis will be prepared. The comment period may be extended by ERA in accordance with § 501.7. See § 501.52(b) of this Part for further information with respect to the comment period. Written comments shall be filed in accordance with § 501.7.

§ 501.33 Requests for a public hearing.

(b) *Existing powerplants.* In the case of a petition for an exemption from a prohibition imposed by a final rule or order issued by ERA to an electing powerplant under former sections of Title III of FUA or a petition for a permit under § 504.1, any interested person may submit a written request that ERA convene a public hearing in accordance with section 701 of FUA within 45 days after the notice of the filing of a petition

is published in the Federal Register. In the case of a proposed prohibition rule or order issued to an electing powerplant under former section 301, the 45 day period in which to request a public hearing shall commence upon the publication of the Notice of Availability of the Tentative Staff Analysis. In the case of a proposed prohibition order to be issued to certifying powerplants under section 301 of FUA, as amended, the 45 day period in which to request a public hearing commences upon publication of the Notice of Acceptance of Certification. This time limit may be extended at the discretion of ERA in accordance with § 501.7.

2. By adding a new § 501.50 and amending § 501.51 by revising the introductory text of paragraph (a), paragraph (b) (2) and (3), and paragraph (d)(3) in § 501.51, as follows:

§ 501.50 Policy.

Except in conjunction with a prohibition order requested by the intended recipient, ERA shall not propose to prohibit or prohibit by rule or order the use of petroleum or natural gas either as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an existing installation unless and until ERA adopts rules establishing regulatory requirements governing the issuance of such orders and rules in accordance with the applicable procedural and substantive requirements of law.

§ 501.51 Prohibitions by order—Existing facilities.

(a) ERA may prohibit, by order, the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an existing electing powerplant, if:

(b) * * *

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, ERA shall publish a proposed order in the Federal Register together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) ERA shall provide a period for the submission of written comments of at

least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that ERA is required to make under former section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three month period may be granted at ERA's discretion.

(d) * * *

(3) If ERA determines to accept the request, ERA shall publish a proposed order in the *Federal Register* together with a statement of the reasons for the order. In the case of any electric powerplant, the proceeding for issuance of the prohibition order shall thereafter continue in the same manner as proceedings commenced by ERA on its own initiative.

3. Subpart F is amended as follows:

A. Section 501.60 is amended by revising paragraph (a)(3) to read as follows:

Subpart F—Exemptions

§ 501.60 Purpose and scope.

(a) * * *

(3) If the petitioner owns, operates or controls a new powerplant or MFBI, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under Section 211 of FUA.

B. Section 501.62 is amended by revising paragraphs (d) and (e) to read as follows:

§ 501.62 Petition contents.

(d) *General requirements.* The evidence required under Part 503 Subpart B for each exemption(s) for which the petitioner is applying:

- (1) No alternate power supply (§ 503.8);
- (2) Use of mixtures (§ 503.9);
- (3) Alternative site (§ 503.11);
- (4) Compliance Plan (§ 503.12);
- (5) Environmental impact analysis (§ 503.13);
- (6) Fuels search (§ 503.14).

(e) *Specific evidence.* Evidence required for each exemption, segregated

by exemption (Part 503 Subparts C and D).

C. Section 501.68 is amended by revising paragraph (d) to read as follows:

§ 501.68 Decision and order.

(d) ERA may design any terms and conditions included in any temporary exemption issued or extended under Section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant or installation covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of this provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

PART 504—EXISTING POWERPLANTS

4. Part 504 is amended as follows:

A. By revising the heading for Part 504 to read, "Part 504—Existing Powerplants".

B. By revising § 504.2 to read as follows:

§ 504.2 Purpose and scope.

(a) Sections 504.5, 504.6, and 504.8, set forth the prohibitions that ERA, pursuant to § 301 of the Act, as amended, may impose upon existing powerplants after a review of the certification and prohibition order compliance schedule submitted by the owner or operator of a powerplant. Sections 504.5 and 504.8 are explanatory sections, and § 504.6 provides the informational requirements necessary to support the certification.

(b) Sections 504.6 and 504.7, set forth the prohibitions that ERA may impose upon certain electing powerplants, pursuant to former section 301 (b) and (c) of FUA, where ERA can make the findings as to the unit's technical capability and financial feasibility to use coal or another alternate fuel as a primary energy source. The prohibitions may be made to apply to electing powerplants unless an exemption is granted by ERA under the provisions of the Final Rule for Existing Facilities (10 CFR Parts 500, 501 and 504) published at 45 FR 53682, on August 12, 1980 and 46 FR 59872, on December 7, 1981. Any person who owns, controls, rents or leases an existing electing powerplant may be subject to the prohibitions imposed by and the sanctions provided for in the Act or these regulations, if ERA can make the findings required by former section 301 (b) and (c) of FUA.

C. By amending § 504.6 by revising paragraph (a) introductory text, (b),

(c)(1), (d), (e) introductory text and (e)(4), and (f) introductory text (retaining all footnotes). Paragraphs (f)(1) through (f)(3) are adopted as final to read as published at 47 FR 17045, April 21, 1982.

§ 504.6 Prohibitions by order (case-by-case).

(a) ERA may prohibit, by order, the use of natural gas or petroleum as a primary energy source in existing powerplants under certain circumstances. In the case of certifying powerplants under section 301 of the Act, as amended, the petitioner must present evidence to support the certification, required by § 504.6 (c), (d), (e), and (f). In the case of electing powerplants, ERA must make the following findings required by § 504.6 (c), (d), (e), and (f), in order to issue a prohibition order to the unit, pursuant to former section 301 (b) or (c):

(b) In the case of electing powerplants, ERA must make a proposed finding regarding the technical capability of a unit to use alternate fuel as identified in subsection (a)(1) above prior to the date of publication of the notice of the proposed prohibition. ERA will publish this finding in the *Federal Register* along with the notice of the proposed prohibition.

(c) *Technical capability.* (1) In the case of electing and certifying powerplants, ERA will consider "technical capability" on a case-by-case basis in order to make the required finding. In the case of a certifying powerplant, the powerplant should present information to support the certification relevant to the considerations set forth below. ERA will consider the ability of the unit, from the point of fuel intake to physically sustain combustion of a given fuel and to maintain heat transfer.²

(d) *Substantial physical modification.* In the case of electing and certifying powerplants, ERA will make its determination on whether a physical modification to a unit is "substantial" on a case-by-case basis. In the case of certifying powerplants, ERA will consider the factors set forth below for the purpose of concurrence in the certification. ERA will consider physical modifications made to the unit as "substantial" where warranted by the magnitude and complexity of the engineering task or where the modification would impact severely upon operations at the site.³ ERA will not, however, assess physical modification on the basis of cost.

(e) *Substantial reduction in rated capacity.* In the case of electing and certifying powerplants, ERA will make this determination on the basis of the following factors. A certifying powerplant should present information to support its certification regarding these factors in order for ERA to make its review for concurrence.

(4) In assessing whether a unit's derating is not substantial, ERA will consider the impact of a reduction in rated capacity of the unit taking into consideration all necessary appurtenances such as air pollution control equipment required to burn an alternate fuel in compliance with environmental requirements expected to be applicable at the date the prohibitions contained in the final prohibition order become effective. However, the potential order recipient may raise in rebuttal the impact of derating on the site at which the unit is located and on the system as well as on the unit itself, if under subparagraph (2), or case-by-case, if under subparagraph (3).

(f) *Financial feasibility.* In the case of certifying and electing powerplants, ERA will make this finding based on the following considerations. A certifying powerplant should present information to support its certification relevant to these considerations in order for ERA to make its review for concurrence. Conversion of a unit to burn coal or an alternate fuel shall be deemed financially feasible if the firm has the actual ability to obtain sufficient capital to finance the conversion, including all necessary land, coal and ash handling equipment, pollution control equipment, and all other necessary expenditures, without violating legal restrictions on its ability to raise debt or equity capital, unreasonably diluting shareholder equity, or unreasonably adversely affecting its credit rating. ERA will consider any economic or financial factors presented by the proposed order recipient in determining the firm's ability or inability to finance the conversion including, but not limited to, the following:

5. By removing the note and revising the title and paragraph (a) of § 504.7 to read as follows:

§ 504.7 Prohibition against excessive use of petroleum or natural gas in mixtures—Electing powerplants.

(a) In the case of electing powerplants, if ERA finds that it is technically and financially feasible for a unit to use a mixture of petroleum or natural gas and an alternate fuel as its primary energy source, ERA may

prohibit, by order, the use in that unit of petroleum or natural gas, or both, in amounts exceeding the minimum amount necessary to maintain reliability of operation consistent with maintaining reasonable fuel efficiency of the mixture.

6. By removing and reserving Subparts C, D, and E (10 CFR 504.10–504.64), as follows:

Subpart C—[Removed and reserved]

Subpart D—[Removed and reserved]

Subpart E—[Removed and reserved]

By removing and reserving Part 506, as follows:

PART 506—[REMOVED AND RESERVED]

[FR Doc. 82-30921 Filed 11-9-82; 8:45 am]
BILLING CODE 6450-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1508 and 1509

Amendments to Requirements for Full-Size and Non-Full-Size Baby Cribs

Correction

In FR Doc. 82-29556 appearing on page 47534 in the issue of Wednesday, October 27, 1982, make the following correction:

On page 47534, third column, under "DATE", "August 27, 1982" should have read "August 27, 1983".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 176

Flathead Indian Irrigation Project, Montana; Revision of Power Rate Schedules and Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim rule and request for comments.

SUMMARY: The Bureau of Indian Affairs is publishing an interim rule which revises power rate schedules for the Flathead Indian Irrigation Project, Montana. Studies by the Project indicate that a rate adjustment is necessary in order to assure sound management and operation of the power system. Power rates will be increased by approximately 53 percent in order to

cover increased rates for purchased power costs.

DATES: Interim rule effective November 10, 1982. Written comments from the public and other interested parties must be received on or before December 10, 1982.

ADDRESS: Flathead Irrigation and Power Project, Bureau of Indian Affairs, P.O. Box G, St. Ignace, Montana 59865.

FOR FURTHER INFORMATION CONTACT: Mr. E. M. Axtell, Flathead Project Engineer at (406) 745-2661.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

Part 232, Flathead Indian Irrigation Project was renumbered as Part 176 on March 30, 1982 (47 FR 13326). All references in this document are made to Part 176.

A study performed by the Flathead Irrigation and Power Project indicates that a rate adjustment is necessary in order to assure sound management and operation of the power system in accordance with policies of the Bureau of Indian Affairs. Approximately fifty-three (53) percent additional fees are needed to offset expenses attributable to: (1) Increased cost of power purchased from the Project's power suppliers, (2) rapidly increasing cost of material, labor and equipment, (3) development of a preventive program for safety purposes, (4) proposed increase of the reserve fund established for making emergency repairs and/or replacements, and (5) for other purposes to insure continuous operation of the power system.

The present method of increasing power rates involves the rulemaking process. Whenever one of the Project's power suppliers implements a rate increase, the Project must immediately review and analyze the effect of this action and, if necessary, initiate a change in rulemaking through the *Federal Register* to increase its power rates accordingly. The time delays associated with the rulemaking process have in the past prevented the Project from adjusting its power rates in a timely manner, thus causing economic instability in the operation of the power system.

A provision (§ 176.59) has been added by this interim rule which provides for the Area Director of the Billings Area Office, Bureau of Indian Affairs, to automatically adjust Project power rates through unilateral action when the costs of power and energy purchased through