(*4*) Submit the name(s) and address(es) of the transferor(s) that retained the right-of-first-refusal.

(B) If the authorized officer determines, based on the information supplied under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal prevents action on the pending relinquishment, the authorized officer will send, via certified mail, return receipt requested, a request for additional information to the transferor that retained the right-of-first-refusal. The request shall state that the transferor that retained the right-of-first-refusal shall comply with subpart 3453 of this title within 30 days of receipt. If the transferor that retained the right-of-first-refusal does not comply within the 30-day time frame, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(C) If the authorized officer determines, pursuant to the information submitted under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal does not prevent action on the request for relinquishment, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(5) Leases that have been mined out (i.e., all recoverable reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity, or any of its affiliates, under the provisions of this subpart.

(6)(i) The authorized officer shall determine the date of first production for the purposes of establishing the beginning of the bracket, if applicable.

(ii) An entity shall not be disqualified under the provisions of this subpart if each lease that the entity holds is:

(A) Producing and is within its bracket;

(B) Producing and has produced commercial quantities during the bracket.

(C) Producing and has achieved production in commercial quantities (an entity holding such a lease is disqualified under section 2(a)(2)(A) of the Act from the end of the bracket until production in commercial quantities is achieved), for leases which fail to produce commercial quantities within the bracket;

(D) Producing in compliance with the diligent development and continued operation provisions of Part 3480 of this title, for leases which began their first production of coal on or after August 4, 1976, after becoming subject to the diligence provisions of Part 3480 of this title;

(E) Contained in an approved logical mining unit which is producing coal in accordance with the logical mining unit stipulations of approval pursuant to § 3487.1 (e) and (f) of this title; or

(F) Relieved of a producing obligation pursuant to paragraphs (e) (1), (4), or (5) of this section.

* * * * *

PART 3500—[AMENDED]

7. The authority citation for Part 3500 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1966 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2—460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

6. Section 3502.1 is amended by adding a new paragraph (d) to read:

§ 3502.1 Who may hold leases and permits.

* * * * *

(d) Except for an assignment or sublease under § 3506 of this title, a lease for leasable minerals shall be issued only to an entity if it is in compliance with section 2(a)(2)(A) of the act (compliance is determined for Federal coal leases in accordance with § 3472.1-2(e) of this title). A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions at § 3509.4 of this title. The term 'entity' is defined at § 3400.0-5(rr) of this title."

[FR Doc. 86-27519 Filed 12-4-86; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule delegates to the FEMA Regional Directors authority to reallocate surplus EMA funds to States within their regions during the first 9 months of each fiscal year.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: John McKay, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, DC 20472 (202-646-4252).

SUPPLEMENTARY INFORMATION: The change in procedures will allow a FEMA Regional Director the authority for the first 9 months of each fiscal year to reallocate unused portions of a State's EMA allocation among the other States as, in his/her best judgment, will best assure the adequate development of the civil defense capability of the Nation. This delegation is additional to, and does not replace that of, the Associate Director for State and Local Programs and Support (44 CFR 2.61(j)(7)).

The Regional Directors need not apply the same formula for the reallocations as is done for the original allocations by the Director. Therefore, the paragraphs (l) and (m) in § 302.5 are to be revised to accommodate the redelegation from the Director to the Regional Directors to reallocate EMA funds under certain conditions.

Nonapplicability

As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to which the funding is made available and, thus, is not subject to the requirements of the Regulatory Flexibility Act which is concerned with small entities. No regulatory flexibility analysis will be prepared. This amendment does not call for any collection of information requiring clearance under section 3504(h) of the Paperwork Reduction Act and, as the regulation is administrative in character, there is no requirement for environmental clearance.

Comments and Considerations

A total of eight responses were received; six were from States and two from territories. Five States and the two territories expressed total agreement with the proposed rule.

One State disagreed with the delegation to the Regional Directors based on the premise that allowing regions to reallocate EMA funds would not get funds where they are most needed.

EMA is one of the grant programs administered by FEMA through the Comprehensive Cooperative Agreement (CCA) to the States. The authority to reallocate funds to States within the regions for the first 9 months of the fiscal year has been delegated to the FEMA Regional Directors for the other CCA grant programs beginning in FY 1987. This final rule will make that authority consistent for all CCA programs and enhance fiscal management of all the programs.

One State recommended that the authority for the Regional Directors to reallocate EMA funds to States within their regions be extended at least through August 15 of each fiscal year.

Again, we feel that the delegation of reallocation authority to the Regional Directors should be consistent for all of the CCA programs. Also, in the case of the EMA program, the time required for FEMA Headquarters to solicit information from the States concerning surplus funds and additional funding requirements, and then to process the necessary reallocation documentation dictates the provision for the reallocation authority to revert to headquarters for the final 3 months of the fiscal year. The authority during that period of time offers the opportunity for alleviating funding inequities among the States that may have existed earlier in the fiscal year.

List of Subjects in 44 CFR Part 302

Civil defense, Grants programs, National defense.

Accordingly, it is proposed to amend 44 CFR, Chapter 1, Subchapter E, Part 302, Code of Federal Regulations, as follows:

PART 302—CIVIL DEFENSE—STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

1. The authority citation of Part 302 continues to read as follows:

Authority: 50 U.S.C. App. 2251 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 302.5 [Amended]

2. In § 302.5, paragraphs (l) and (m) are revised, and new paragraphs (n) and (o) are added:

* * * * *

(l) After being advised of its annual formal allocation, if a State fails to submit, within 60 days, an approvable annual submission in the amount of its allocation, the Regional Director may reallocate the unused portion to other States in the region in such amounts as in his/her judgment will best assure adequate development of the civil defense capability of the Nation. The exception to this authority is in the event a State, or local jurisdiction, refuses to participate in attack preparedness activities. EMA funds withheld or returned for that reason are to be released to headquarters for reallocation on a national basis. In addition, the Regional Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

(m) Immediate notice to the headquarters EMA Program Manager of State reallocations is required in the form of copies of EMA-approved Annual Submission amendment documents, accompanied by copies of assistance award/amendment documents signed by regional and State authorized officials of both the releasing and recipient States.

(n) There is no dollar ceiling on the amount of funds that may be reallocated among States in a region. However, at any time that there are funds surplus to the eligible needs of the States within a region, those funds should be promptly released to headquarters for reallocation to other States with unfunded additional requirements.

(o) On July 1 of each fiscal year, the authority to reallocate EMA funds shall revert to the Director. In addition, any excess EMA funds available on that date, or that become available during the remainder of the fiscal year, are to be promptly released to headquarters for reallocation by the Director.

Dated: December 2, 1986.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-27326 Filed 12-4-86; 8:45 am]

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DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation Concerning Management and Operating Contracts

AGENCY: Office of the Secretary, DOE.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Energy Acquisition Regulation (DEAR) in order to describe the contractor employee travel expense limitations that apply to Department of Energy (DOE) management and operating (M&O) contracts as established for Federal executive agency contractors under the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (Pub. L. 99-234), hereafter referred to as the "Act.".

EFFECTIVE DATE: This regulation will be effective December 5, 1986.

FOR FURTHER INFORMATION CONTACT:
Rudolph J. Schuhbauer, Business and Financial Policy Branch (MA-421.2), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252-8173

Paul Sherry, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, Washington, DC 20585, (202) 252-1526.

SUPPLEMENTARY INFORMATION:

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I. Background

Under section 644 of the DOE Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

Title II, Travel Expenses of Government Contractors, under section 201 of the Act, specified ". . . costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provison of such subchapter." The referenced rates and amounts refer to the statutory provisions established in Title I, Travel Expenses of Federal Civilian Employees, of the Act, for Federal civilian employees performing official travel.

The Administrator, General Services Administration (GSA), amended the Federal Travel Regulations to implement the new statutory provisions of Title I and to specify "maximum per diem rates" applicable to Federal employees performing official travel performed on or after July 1, 1986 (51 FR 19660, 5–30–86). To implement the Act's requirements for commercial organizations receiving Federal awards, the Federal Acquisition Regulation (FAR) Council amended the FAR cost principles applicable to commercial organizations; i.e., FAR 31.205–46, Travel costs (51 FR 27488, 7–31–86).

The final rule being promulgated today by DOE applies the provisions of the Act to DOE's M&O contractors. DOE's cost principle amendment to DEAR 970.3102–17, Travel costs, states that payments for lodging, meals, and incidental expenses incurred by M&O contractor personnel while performing contract requirements shall be considered to be reasonable and allowable contract cost to the extent that they do not exceed the maximum per diem rate limitations set forth in the (1) Federal Travel Regulations, (2) Joint Travel Regulations, or (3) Standardized Regulations (Government Civilians, Foreign Areas). In special or unusual situations, actual costs in excess of the maximum per diem limits, as authorized for Federal civilian employees in the Federal Travel Regulations, may be allowed under M&O contracts. This amendment also requires that advance agreements be established regarding the M&O contractor's implementation of the Act's travel cost limitations.

The amendments to the clauses cited at DEAR 970.5204–13, Allowable costs and fixed-fee (CPFF management and operating contracts), and DEAR 970.5204–14, Allowable costs and fixed-fee (support contracts), provide that payments to M&O contractor employees for lodging, meals and incidental expenses shall be reasonable and allowable contract cost to the extent they do not exceed the rates and amounts established for Federal civilian employees.

II. Procedural Requirements

A. Review Under Executive Order 12291

The Executive order entitled, "Federal Regulations," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This rule does not involve any of the topics requiring prior review under the bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

This rule may impose some additional recordkeeping requirements. Since the information collected moves directly from the contractor to the GSA, responsibility for recordkeeping and paperwork burden remains with GSA. DOE has requested an OMB control number from GSA.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432, et seq., 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department concluded that this rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department did not hold a public hearing on this rule.

III. Public Comments

This final rule implements, unchanged, the proposed provisions contained in the Notice of Proposed Rulemaking (NOPR) that DOE published in the **Federal Register** on September 11, 1986 (51 FR 32340), wherein public comments were invited for the 30-day period ending October 14, 1986. Public comments were received from two organizations and other Federal officials. The public comments and DOE's responses thereto are summarized in the paragraphs that follow:

Comment: One commenter stated that the proposed amendments do not apply to an existing M&O contract and that an existing M&O contract cannot be amended by regulation but only by mutual agreement of the contracting parties.

Response: The overall thrust of the comment concerns when the amendments being finalized by this rulemaking will be applicable to existing M&O contracts. In this regard, DOE will require that existing M&O contracts be amended as soon as practicable (e.g., when the next major contract modification is required) to incorporate the requirements of the final rule, but no later than when the contract is extended or competed in accordance with established DOE procedures.

Comment: One commenter expressed the concern that the GSA travel limitations impose a costly dual rate system; i.e., rates for lodging and rates for meals and incidental expenses.

Response: The proposed DEAR amendments provide that travel costs are not to exceed the "maximum per diem rates" applicable to Federal travelers. Use of a dual rate system is not intended for M&O contractors. However, appropriate adjustments to the daily maximum per diem rates published in the Federal Travel Regulations are required where a contractor employee is not in a travel status for a full day. Such adjustments may also be made on an overall basis provided employee travel costs reimbursed under the M&O contract do not exceed the amounts and rates applicable to Federal civilian travelers in a similar circumstance.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on November 21, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

2. In subsection 970.3102-17 new paragraph (c) is added to read as follows:

970.3102-17 Travel costs.

* * * * *

(c) *Lodging, meals and incidental expenses.* (1) Costs for lodging, meals, and incidental expenses incurred by management and operating contractor personnel traveling on official business in the performance of contract work are allowable costs but subject to the limitations set forth in this subsection. Payments for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable cost to DOE.

(2) Except as provided in subparagraph (c)(3) of this subsection, management and operating contractor payments for lodging, meals, and incidental expenses (as defined in the regulations cited in (c)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable cost only to the extent that they do not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the:

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States;

(ii) Joint Travel Regulations, Volume 2, DOD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (c)(2)(i) and (ii) of this subparagraph.

(3) In special or unusual situations, management and operating contractor personnel may be paid for actual expenses in excess of the above-referenced maximum per diem rates provided such payments do not exceed the higher amounts authorized for Federal civilians employees as permitted in the regulations referenced in (c)(2) (i), (ii) or (iii) of this subsection and all of the following conditions are met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in (c)(2)(i), (ii) or (iii) of this subsection exist.

(ii) A written justification for payment of the higher amounts is approved by an officer or appropriate official of the management and operating contractor's organization.

(iii) Documentation exists to support the payment of actual expenses incurred and each employee expenditure in excess of $25.00 is supported by a receipt. The approved justification required by (c)(3)(ii) and, if applicable, DOE advance approvals required under (c)(5) of this subsection must also be retained.

(4) Subparagraphs (c)(2) and (c)(3) of this subsection do not incorporate the regulations cited in (c)(2) (i), (ii) and (iii) in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates and the definitions of lodging, meals and incidental expenses are to be applied to management and operating contractors.

(5) An advance agreement with respect to compliance with subparagraphs (c)(2) and (c)(3) of this subsection will be established in the personnel appendix of the contract. The management and operating contractor shall also be required to obtain advance approval from DOE, if it becomes necessary for the contractor to exercise the authority to make payments based in the higher actual expense method repetitively or on a continuing basis in a particular area. It is not intended that individual contractor authorizations to pay actual expenses in excess of applicable maximum per diem rates be approved in advance by DOE. Such before the fact, case-by-case approvals should only be invoked when the management and operating contractor does not have acceptable travel cost policies, procedures or practices in effect.

3. In subsection 970.5204-13, the clause is amended by adding new subparagraphs (e) (33), (34) and (35) to read as follows:

970.5204-13 Allowable costs and fixed fee (CPFF management and operating contracts).

* * * * *

(e) * * *

(33)-(34) [Reserved]

(35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

4. In subsection 970.5204-14, the clause is amended by adding new subparagraphs (e) (31), (32), and (33) to read as follows:

970.5204-14 Allowable costs and fixed fee (support contracts).

* * * * *

(e) * * *

(31)-(32) [Reserved]

(33) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

[FR Doc. 86-27400 Filed 12-4-86; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160 and 1165

[Ex Parte No. 55 (Sub-43A) and Ex Parte No. MC-142 (Sub-1)]

Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property) and Removal of Restrictions From Authorities of Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted rules (*see* appendix) governing motor property carrier applications for operating authority and restriction removal procedures (49 CFR Parts 1160 and 1165) in accordance with the