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DEPARTMENT OF AGRICULTURE

7 CFR Part 2903

Office of Energy; Availability of Information

AGENCY: Office of Energy, USDA.

ACTION: Final rule.

SUMMARY: This document removes the regulations of the Office of Energy (OE) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to reflect an internal reorganization of the Department of Agriculture (USDA).

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Information Staff, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, Telephone (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1)) requires Federal agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency. Part 2903 of Title 7, Code of Federal Regulations, was issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of USDA, OE has been integrated into the Economic Research Service (ERS), USDA. This document removes 7 CFR Part 2903. Requests for information relating to OE may be obtained through the FOIA Coordinator for ARS pursuant to 7 CFR Part 1, Subpart A, and 7 CFR Part 3701.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply.

List of Subjects in 7 CFR Part 2903

Freedom of Information.

Accordingly, under the authority of 5 U.S.C. 301 & 552, Part 2903 is removed.

Done at Washington, DC, this 26th day of January, 1996.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 96–2351 Filed 2–2–96; 8:45 am]

BILLING CODE 3410–18–M

DEPARTMENT OF ENERGY

10 CFR Parts 830 and 835

Office of the General Counsel; Ruling 1995–1; Ruling Concerning 10 CFR Parts 830 (Nuclear Safety Management) and 835 (Occupational Radiation Protection)

AGENCY: Department of Energy.

ACTION: Notice of Ruling 1995–1.

SUMMARY: The Department of Energy (DOE) has issued Ruling 1995–1 which interprets certain regulatory provisions relating to DOE's nuclear safety requirements. This Ruling is intended to be a generally applicable clarification that addresses questions concerning the applicability and effect of these provisions.

FOR FURTHER INFORMATION CONTACT: Ben McRae, Office of the Assistant General Counsel for Civilian Nuclear Programs, Room 6A 167, Forrestal Building, 1000 Independence Ave., SW., Washington DC 20585; telephone (202) 586–6975.

SUPPLEMENTARY INFORMATION:

Department of Energy's Ruling 1995–1

A. Introduction

The Assistant Secretary for Environment, Safety and Health has requested that the General Counsel respond to several questions regarding nuclear safety regulations 10 CFR Parts 830 (Nuclear Safety Management) and 835 (Occupational Radiation Protection).

This ruling responds to those questions and constitutes an interpretation under Subpart D of 10 CFR Part 820.[1]

B. Questions and Responses

1. Is the scope of either Part 830 or Part 835 limited to those facilities or activities involving byproduct, source, or special nuclear materials, as defined in the Atomic Energy Act?

No, neither Part 830 nor 835 is limited to activities or facilities involving byproduct, source, or special nuclear material. The requirements in Parts 830 and 835 cover all activities under DOE's auspices with the potential to cause radiological harm. These rules are promulgated pursuant to section 161 of the Atomic Energy Act of 1954, as amended (AEA). Section 161b. of the AEA authorizes the Department to promulgate rules ''to govern the possession and use of special nuclear material, source material, and byproduct material'' and section 161i. authorizes the Department to prescribe such regulations as it deems necessary to govern *any* activity authorized pursuant to the AEA, specifically including standards for the protection of health and minimization of danger to life or property.

Although most sources of ionizing radiation are encompassed by the terms ''byproduct material,'' ''source material'' and ''special nuclear material,'' some sources, such as machine-produced radioactive material, are not. Because all ionizing radiation has the potential to cause harm, the Department did not limit the application of the nuclear safety requirements in Parts 830 and 835

[1] Subpart D of Part 820 sets forth the procedural framework for issuing an interpretation, which is defined in Part 820.2(a) to mean:

A statement by the General Counsel concerning the meaning or effect of the [Atomic Energy] Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement which relates to a specific factual situation but may also be a ruling of general applicability where the General Counsel determines such action to be appropriate.

Sections 820.50, .51 and .52 state:

The General Counsel shall be * * * responsible for formulating and issuing any interpretation * * * [and] may utilize any procedure which he deems appropriate to comply with his responsibilities under this subpart. * * * Any written or oral response to any written or oral question which is not provided pursuant to this subpart does not constitute an interpretation and does not provide any basis for action inconsistent with the [Atomic Energy] Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

to situations involving byproduct, source and special nuclear material.

Part 830 covers activities at facilities even where no nuclear material is present such as facilities that prepare the nonnuclear components of nuclear weapons, but which could cause radiological damage at a later time. 10 CFR 830.3(a)(6).

2. Do Parts 830 and 835 apply to Government employees in general and to the Department's Government-owned, Government-operated facilities specifically?

Part 830. Part 830.1 states that it governs the conduct of the Department's ''management and operating contractors and other persons at DOE nuclear facilities.'' [2] Section 830.4(a) provides that no *person* shall take or cause to be taken any action inconsistent with Part 830 or any document implementing Part 830. The definition of ''person'' in Part 830 excludes the Department, the Nuclear Regulatory Commission (NRC), as well as their employees when these employees are acting within the scope of their employment.[3] Therefore, the requirements in Part 830 do not apply to DOE employees.[4]

The preamble to the final Part 830 rule explained that the Department rejected comments that Part 830 be expanded to include DOE employees. The Department found that equivalent requirements were imposed on its employees through DOE directives.[5]

The requirements in Part 830 do not apply to the Department's Government-owned, Government-operated (GOGOs) facilities.[6] While the definition of nuclear facility in Part 830 does not contain an explicit exclusion for facilities operated by the Department, Part 830 only covers nuclear facilities operated and managed by a contractor. GOGOs are governed by the nuclear safety provisions contained in DOE directives.

Part 835. The requirements in Part 835 apply to DOE employees. The scope provision, section 835.1(a), does not limit its applicability to contractors.[7] Moreover, the general rule provision of section 835.3(a) explicitly provides that DOE personnel shall act consistently with the requirements of Part 835.[8]

The requirements in Part 835 also apply to activities at the Department's Government-owned, Government-operated facilities. Unlike Part 830, the general rule provision of Part 835 explicitly provides that, where there is no contractor responsible for a DOE activity, the Department shall ensure the implementation of and compliance with the requirements of Part 835.[9]

3. Is the scope of either Part 830 or Part 835 limited to those facilities or activities subject to civil penalties?

No, neither Part 830 nor 835 is not limited to those facilities or activities subject to civil penalties. The Department's authority to regulate its activities and those of its contractors derives from section 161 of the AEA. Section 161i. extends this authority to all activities undertaken by or for the Department pursuant to the AEA. The Price-Anderson Amendments Act of 1988 added section 234A to the Atomic Energy Act to provide the Department with authority to assess civil penalties for violations of rules, regulations or orders relating to nuclear safety by contractors and subcontractors who are indemnified by the Department pursuant to the Price-Anderson Act.[10] Section 234A did not limit the Department's regulatory authority under the Atomic Energy Act to those situations where the Department can assess civil penalties (that is, situations where there is a Price-Anderson indemnity agreement). Nor does Part 820, 830, or 835 contain any provision that would limit the exercise of this authority to only those facilities or activities subject to civil penalties.

4. To what extent do Parts 830 and 835 apply to subcontractors and suppliers, and is applicability dependent upon indemnification under the Price-Anderson provisions of the Atomic Energy Act?

Both Parts 830 and 835 apply to subcontractors and suppliers. As discussed in the response to question 3, there is no provision in the AEA or in 10 CFR Part 820, 830, or 835 that would limit the applicability of the requirements in Parts 830 and 835 to persons indemnified under the Price-Anderson provisions of the Atomic Energy Act.[11] Both parts provide that ''no person shall take or cause to be taken any action inconsistent with the requirements of the[ese] Part[s] or any program, plan, schedule, or other process established by the[ese] Part[s].'' [12] As discussed in the response to question 2, the definition of ''person'' in Parts 830 and 835 covers all individuals and entities other than the Department, the Commission and their employees. Thus, Parts 830 and 835 and implementation plans adopted thereunder apply to all contractors, subcontractors, suppliers and their employees. Even a visitor to a facility is obligated to comply with applicable requirements in these rules.

5. To what extent are activities performed on a DOE site subject to Parts 830 and 835 if they are regulated by the Nuclear Regulatory Commission (including activities certified by the NRC under section 1701 of the Atomic Energy Act) or by a State under an agreement with the NRC?

Both Parts 830 and 835 contain an explicit exclusion for activities regulated through a license by the Nuclear Regulatory Commission or a State under an Agreement with the

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[2] Section 830.1 states:

This part governs the conduct of the Department of Energy (DOE) management and operating contractors and other persons at DOE nuclear facilities.

[3] Sections 830.3(a) and 835.2(a) state:

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State or political subdivision of, or any political entity within a State, any foreign government or nation or other entity and any legal successor, representative, agent or agency of the foregoing; *provided that person does not include the Department or the United States NRC.* (emphasis added)

The only government agencies and employees thereof excluded from this definition are the Department and the NRC.

[4] Section 830.4(b) states:

With respect to a particular DOE nuclear facility, the contractor responsible for the design, construction, operation, or decommissioning of that facility shall be responsible for implementation of, and compliance with, the requirements of this part.

Section 830.4(a) states:

No person shall take or cause to be taken any action inconsistent with the requirements of this part or any program, plan, schedule, or other process established by this part.

[5] 59 FR 15845 (1994).

[6] DOE is considering expanding the scope of 830 to cover GOGOs and has requested comments on this issue in its Notice of limited reopening of comment periods published on August 31, 1995, 60 FR 45381.

[7] Section 835.1(a) states:

The rules in this part establish radiation protection standards, limits, and program requirements for protecting individuals from ionizing radiation resulting from the conduct of DOE activities.

[8] Section 835.3(a) states:

No person or *DOE personnel* shall take or cause to be taken any action inconsistent with the requirements of:

(1) This part; or

(2) Any program, plan, schedule, or other process established by this part. (emphasis added)

[9] Section 835.3(c) states:

Where there is no contractor for a DOE activity, DOE shall ensure implementation of and compliance with the requirements of this part.

[10] Section 234A.a. states:

Any person who has entered into an agreement of indemnification under subsection 170d. (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation, or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act * * * shall be subject to a civil penalty. * * *

[11] Section 11 of the Atomic Energy Act defines ''person indemnified'' as ''the person with whom an indemnity agreement is executed * * * and *any other person* who may be liable for public liability. * * *'' (emphasis added)

[12] Sections 830.4(a) and 835.3(a) are set forth in footnotes 4 and 8, *supra.*

NRC [13] (or certified by the NRC under section 1701 of the Atomic Energy Act).[14] This exclusion is intended to prevent an activity from being subject to dual regulation under the Atomic Energy Act. The exclusion is not intended to permit activities to escape regulation and thus applies only to the portion of a facility or activity conducted pursuant to a NRC license or certification or state authorization derived from an agreement with the NRC.

6. To what extent are DOE activities performed off a DOE site subject to Parts 830 and 835, and what is the effect if these activities are performed on a site regulated by the Nuclear Regulatory Commission or by an Agreement State?

Part 830/Offsite Activities. Part 830 provides that it ''governs the conduct of the Department of Energy (DOE) management and operating contractors and other persons at DOE nuclear facilities.'' 10 CFR 830.1 (emphasis added) Section 830.3 provides that a ''nuclear facility'' may be either a ''reactor'' or a ''nonreactor nuclear facility.'' [15] ''Nonreactor nuclear facility means those activities or operations that involve radioactive or fissionable material in such form and quantity that a nuclear hazard potentially exists to the employees or the general public.'' [16] Thus, nonreactor facility includes not just facilities but activities and operations. However, because Part 830 applies only *at a DOE* nuclear facility, Part 830 applies only at DOE operations and activities and would not apply, for example, at a supplier's facility.[17]

Part 835/Offsite Activities. Part 835 is not limited to DOE activities at a DOE facility. Part 835 applies to the ''conduct of DOE activities.'' [18] ''DOE activities'' include ''an activity taken for or by the DOE that has the potential to result in * * * exposure * * * to radiation or radioactive material.'' [19] Thus, Part 835 covers activities performed off a DOE site and would include, for example, an action taken for DOE by a supplier at the supplier's faciltiy.[20]

Effect of NRC or State Licensing on Applicability of Parts 830 and 835. DOE activities that are subject to Nuclear Regulatory Commission licensing or certification or to Agreement State regulation are excluded from regulation under Parts 830 and 835. See answer to Question 5 above. With respect to activities regulated by a State, this exclusion only applies to the extent the State is regulating pursuant to AEA authority derived through an Agreement with the NRC.

7. To what extent do Parts 830 and 835 apply to activities performed under cooperative agreements, grants, and work-for-others?

Parts 830 and 835 apply to activities undertaken pursuant to the Department's authority under the Atomic Energy Act, including arrangements involving activities under cooperative agreements, grants, and work-for-others pursuant to its authority under section 31 (Research Assistance) and section 33 (Research For Others) of the AEA. Because neither Part 830 nor Part 835 contain any explicit exclusion of activities performed under work-for-others arrangements, cooperative agreements, or grants, the requirements in Parts 830 and 835 apply to such activities to the same extent the requirements apply to other activities undertaken pursuant to the Department's authority under the AEA.

Section 31d. of the Atomic Energy Act provides that arrangements under that section (cooperative agreements and grants) ''shall contain such provisions (1) to protect health [and] (2) to minimize danger to life and property * * * as the [Department] may determine.'' Thus, the Department has discretion to exclude from a particular arrangement some or all of the requirements in Parts 830 and 835.

Although the requirements of Parts 830 and 835 apply to arrangements other than contracts, civil penalty assessments are authorized only for a

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[13] Section 274 of the Atomic Energy Act provides that the NRC can enter into an agreement with a State to permit the State to regulate byproduct, special nuclear, and source material in certain specified situations. To the extent the NRC exercises this provision to transfer authority to a State, the State is considered an ''Agreement State.''

[14] Section 830.2 states:

This part does not apply to:

(a) Activities that are regulated through a license by the Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, including activities certified by the NRC under section 1701 of the Atomic Energy Act.

Section 835.1(b) states:

The requirements in this part do not apply to:

(1) Activities that are regulated through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission, including activities certified by the Nuclear Regulatory Commission under section 1701 of the Atomic Energy Act.

[15] Section 830.3(a) states:

Nuclear facility means reactor and nonreactor nuclear facilities.

* * * * *

Non-reactor nuclear facility means those activities or operations that involve radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists to the employees or the general public. Incidental use and generating of radioactive materials in a facility operation (e.g., check and calibration sources, use of radioactive sources in research and experimental and analytical laboratory activities, electron microscopes, and X-ray machines) would not ordinarily require the facility to be included in this definition. Transportation of radioactive materials, accelerators and reactors and their operations are not included. The application of any rule to a nonreactor nuclear facility shall be applied using a graded approach. Included are activities or operations that:

(1) Produce, process, or store radioactive liquid or solid waste, fissionable materials, or tritium;

(2) Conduct separations operations;

(3) Conduct irradiated materials inspections, fuel fabrication, decontamination, or recovery operations;

(4) Conduct fuel enrichment operations;

(5) Perform environmental remediation or waste management activities involving radioactive materials; or

(6) Design, manufacture, or assemble items for use with radioactive materials and/or fissionable materials in such form or quantity that a nuclear hazard potentially exists.

* * * * *

Reactor means * * * the entire nuclear reactor facility, including the housing, equipment, and associated areas devoted to the operation and maintenance of one or more reactor cores. * * *

[16] 10 CFR Part 830.3(a). Neither the AEA nor Part 830 limits the meaning of radioactive or fissionable material. In the preamble to the final rule that adopted Part 830, the Department rejected comments that requested a threshold to exclude coverage of low hazard facilities and reaffirmed its intent to cover all facilities that involve radioactive material in such form and quantity that a nuclear hazard potentially exists. See comment 9 and the response thereto, 59 FR 15844 (1994). In the same preamble, the Department stated that the definition of hazard in Part 830 is intended to cover ''all situations with any potential to cause harm to people, facilities, or the environment.'' See comment 7 and the respose thereto, 59 FR 15488 (1994). We are considering limiting the scope of Part 830 to those nuclear facilities classified as category 3 or higher in DOE Standard 1027. See Notice of Limited Reopening of Comment Periods, 60 FR 45381, August 31, 1995.

The only activities involving radioactive or fissionable materials not covered are those explicitly excluded by the definition of ''nonreactor nuclear facility,'' that is, activities that involve (1) transportation of radioactive material, (2) accelerators, or (3) the incidental use or generation of radioactive material associated with devices such as check and calibration sources, electron microscopes, and X-ray machines. While some activities at nuclear weapons facilities are excluded from coverage pursuant to section 830.2, these facilities are nonetheless nuclear facilities for purposes of section 830.3 and most activities at these facilities are covered by Part 830.

[17] DOE is considering expanding the scope of 830 to include those off-site activities that may affect the safe management of DOE sites and has requested comments on this issue in its Notice of Limited Reopening of Comment Periods published on August 31, 1995 in the Federal Register, 60 FR 45381.

[18] See footnote 7.

[19] Section 835.2(a) states:

DOE activities means an activity [sic] taken for or by the DOE that has the potential to result in the occupational exposure of an individual to radiation or radioactive material. The activity may be, but is not limited to, design, construction, operation, or decommissioning. To the extent appropriate, the activity may involve a single DOE facility or operation or a combination of facilities and operations, possibly including an entire site.

[20] The scope of Part 835 is also broader than 830 in that it does not exclude accelerators, transportation activities or incidental use of radioactive materials that are excluded from the definition of nonreactor nuclear facility in 830. See comment 11 and response thereto in the preamble to the final Part 835 rule, 59 FR 15845 (1994).

''person who may conduct activities under a contract with the Department of Energy * * *'' and any subcontractor or supplier thereto. Civil penalties are not authorized for activities conducted under a cooperative agreement, grant, or work-for-others arrangement, as distinguished from a contract. See Sections 234Aa. and 170d.(1)(A) of the AEA and the answer to question 8 below.

8. May DOE assess civil penalties against persons other than contractors indemnified under the Price-Anderson provisions of the Atomic Energy Act?

Civil penalties apply only to contractors who are indemnified under the Price-Anderson Act and any subcontractors and suppliers thereto.

Section 234A of the AEA authorizes civil penalties assessment for contractors of the Department (or any subcontractor or supplier thereto) that have entered into a Price-Anderson indemnity agreement with the Department. Section 170d.(1)(A) of the AEA mandates a Price-Anderson indemnity agreement between the Department and a contractor if activities by the contractor for the Department involve the risk of public liability.[21] Section 11 of the Atomic Energy Act defines public liability as ''any legal liability arising out of or resulting from a nuclear incident'' and defines nuclear incident as ''any occurrence * * * causing [damage or injury] * * * arising out of or resulting from * * * source, special nuclear, or byproduct material.''

Section 234A further limits civil penalties to situations where a contractor (or any subcontractor or supplier thereto) violates any applicable rule, regulation, or order of the Secretary of Energy relating to nuclear safety. 10 CFR Part 820 sets forth the procedural rules for DOE nuclear activities, including the procedures for assessing civil penalties. Part 820 defines nuclear safety requirement broadly to include all ''enforceable rules, regulations, or orders relating to nuclear safety adopted by DOE.* * *''[22] Section 820.20(b) limits the basis for assessment of civil penalties to violations of a DOE Nuclear Safety Requirement, *i.e.*, one set forth in the Code of Federal Regulations, a Compliance Order under part 820, or a plan or program implementing those provisions.[23] Thus, the requirements in Parts 830 and 835 form part of the set of nuclear safety requirements which, if violated, provide a basis for the assessment of civil penalties.

Therefore, only a Price-Anderson indemnified DOE contractor, and any subcontractor or supplier thereto, who violates a nuclear safety requirement of the type listed in section 820.20(b), may be assessed a civil penalty by the Department.

9. Are there any indemnification provisions other than the Price-Anderson provisions that apply to DOE facilities and activities and, if so, could such indemnification be used to invoke civil penalties for violations of Parts 830 and 835 or the applicability of the requirements in Parts 830 and 835?

Although there are other indemnification provisions that could be applied to DOE facilities and activities, there are no other indemnification provisions that could be used to invoke civil penalties under section 234A of the AEA. Section 170d.(1)(B)(i)(I) of the Atomic Energy Act provides that agreements of indemnification under the Price-Anderson provisions of that Act shall be the ''exclusive means of indemnification for public liability arising from activities'' conducted under a contract with the Department. This restriction on the Secretary's use of indemnity authority is directed to indemnification for public liability. With respect to situations involving liability other than public liability as defined in section 11 of the AEA,[24] other indemnification provisions (such as Public Law 85–804) may be available.

As discussed in the response to question 8, civil penalties under section 234A may be assessed only with respect to contractors indemnified under the Price-Anderson provisions of the AEA. The requirements of Parts 830 and 835, however, may be applied to DOE facilities or activities whether or not such facilities or activities are covered by DOE indemnification. As discussed in the response to question 3, section 161 of the AEA is the authority for the requirements in Parts 830 and 835 and the exercise of this authority is not dependent on whether the Department provides an indemnification for liability resulting from the activities to which the requirements apply.

10. What is the purpose of the exclusion in Parts 830 and 835 for activities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations and what activities are intended to be included within the scope of this exclusion?

Parts 830 and 835 contain identical exclusions for ''[a]ctivities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations.''[25] This exclusion is drafted narrowly to cover only those activities necessary to prevent an accidental or unauthorized nuclear detonations (that is, where the component parts of a nuclear weapon have been assembled in a manner such that a nuclear detonation could take place). The basis for this exclusion is the paramount importance of preventing accidental or unauthorized nuclear detonations and ensuring that the requirements in Parts 830 and 835 do not come into conflict with activities necessary to prevent any such detonation.

However, these exclusions are not intended to relieve the person responsible for a DOE nuclear facility or a DOE activity from complying with the requirements in Parts 830 and 835 to the extent they do not interfere with the conduct of activities undertaken to prevent an accidental or unauthorized nuclear detonation. For example, under Part 830, a contractor must develop and implement a Quality Assurance Program for a nuclear facility where nuclear weapons are or may be present. A provision within the Quality Assurance Program may be disregarded, however, to the extent it limits the conduct of an activity to prevent the detonation of a nuclear weapon. Under Part 835, for example, a contractor must implement and comply with the radiological posting requirements with respect to a

[21] Section 170d.(1)(A) states:

[T]he Secretary shall * * * enter into agreements of indemnification * * * with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability.* * *

[22] Part 820.2(a) states:

DOE Nuclear Safety Requirements means the set of enforceable rules, regulations, or orders relating to nuclear safety adopted by DOE (or by another agency if DOE specifically identifies the rule, regulation, or order) to govern the conduct of persons in connection with any DOE activity and includes any programs, plans, or other provisions intended to implement these rules, regulations, orders, a Nuclear Statute [that is, any statute or provision of a statute that relates to a DOE nuclear activity and for which DOE is responsible], the [Atomic Energy] Act, including technical specifications and operational safety requirements for DOE nuclear facilities. For purposes of the assessment of civil penalties, the definition of DOE Nuclear Safety Requirements is limited to those set forth in 10 CFR section 820.20(b). (emphasis added)

[23] Section 820.20(b) provides that the basis for the assessment of civil penalties is a violation of:

(1) Any DOE Nuclear Safety Requirement set forth in the Code of Federal Regulations;

(2) Any Compliance Order issued pursuant to subpart C of this part; or

(3) Any program, plan, or other provision required to implement any requirement or order identified in paragraphs (b)(1) or (b)(2) of this section.

[24] See discussion in the answer to Question 8 above, regarding the definition of public liability.

[25] Sections 830.2(c) and 835.1(b)(3).

DOE activity that involves or may involve nuclear weapons. These posting requirements may be disregarded, however, to the extent they limit the conduct of a particular activity to prevent the detonation of a nuclear weapon, such as moving the weapon to an area that is not posted correctly for the presence of a nuclear weapon.

The Department, recognizes that the exclusion could be interpreted more broadly than intended and therefore may adopt a clarifying amendment to the exclusions stated in 10 CFR 830.2(c) and 835.1(b)(3).[26]

Robert R. Nordhaus,

General Counsel.

[FR Doc. 96–2345 Filed 2–2–96; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union loan rate ceiling is scheduled to revert to 15 percent on March 9, 1996, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period from March 9, 1996 through September 8, 1997. Loans and lines of credit balances existing prior to May 15, 1987, may continue to bear their contractual rate of interest, not to exceed 21 percent. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: March 9, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428.

FOR FURTHER INFORMATION CONTACT: James F. Feeney, Office of Investment Services, Senior Investment Officer, at the above address. Telephone number: (703) 518–6620.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for federal credit credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the Board to set a higher limit, after consulting with Congress, the Department of the Treasury and other federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (1) money market interest rates have risen over the preceding 6 months; and (2) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first-half of the 1980s, the Board extended the 21 percent ceiling four times. On March 11, 1987, the Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 18, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present.

The Board felt, and continues to feel, that the 18 percent ceiling will fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions can react to any adverse economic developments, and will ensure that any increase in the cost of funds would not impinge on earnings of federal credit unions.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. In the final analysis, the market sets the rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of credit union members. Congress has, however, imposed loan rate ceilings since 1934. In 1979, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent if the Board can justify it. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Justification for a Ceiling No Higher Than 18 Percent

Money Market Interest Rates

During the six-month period following the Board's July 1994 decision to continue the 18 percent ceiling, short-term money market rates increased about 150 basis points. For example, the two-year treasury note increased in yield from 6.15 percent to 7.69 percent for a gain of 154 basis points and a 25 percent change (see table 1).

TABLE 1.—MONEY MARKET INTEREST RATES

Maturity	Yields as of July 1, 1994	Yields as of December 30, 1994	Change in basis points
3-month	4.29	5.68	139
6-month	4.82	6.50	168
1-year	5.49	7.16	167
2-year	6.15	7.69	154
3-year	6.46	7.78	132
5-year	6.94	7.83	89

During the recent six-month period from July through December 1995, short-term money market rates decreased about 50 basis points. For example, the rate on the two-year treasury note dropped 60 basis points from 5.79 percent to 5.19 percent for a 10 percent change (see table 2). Although interest rates have fallen since July 1995, there is no assurance that they will remain at current levels during the period of this extension (from March 9,1996 through September 8, 1997). Most economists believe that rates will fall a bit further in early 1996 and then rise in the fourth quarter of 1996 or early in 1997.

Despite the market improvement in interest rates in the last six months, the NCUA board believes that, in view of the uncertain outlook for interest over the next 18 months, lowering the interest rate ceiling at this time could cause an unnecessary burden on credit unions, especially those with 20% or more of their assets in high-interest rate loans.

TABLE 2.—MONEY MARKET INTEREST RATES

Maturity	Yields as of July 1, 1995	Yields as of December 30, 1995	Change in basis points
3-month	5.60	5.12	48
6-month	5.60	5.18	42
1-year	5.62	5.16	46
2-year	5.79	5.19	60

[26] See Notice of Limited Reopening of Comment Periods, 60 FR 45381, 45384 (1995) for a discussion of the weapons exclusion.