

pound (/lb) of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 to 15 mg/lb of body weight every 12 hours for a minimum of 28 days.

(B) Wounds, abscesses, and dental infections: 2.5 mg per pound (/lb) of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 mg/lb of body weight every 12 hours for a minimum of 28 days.

(ii) *Indications for use*—(A) For the treatment of skin infections (wounds and abscesses) due to susceptible strains of coagulase-positive staphylococci (*Staphylococcus aureus* or *S. intermedius*), deep wounds and abscesses due to susceptible strains of *Bacteroides fragilis*, *Prevotella melaninogenicus*, *Fusobacterium necrophorum*, and *Clostridium perfringens*, dental infections due to susceptible strains of *S. aureus*, *B. fragilis*, *P. melaninogenicus*, *F. necrophorum*, and *C. perfringens*, and osteomyelitis due to susceptible strains of *S. aureus*, *B. fragilis*, *P. melaninogenicus*, *F. necrophorum*, and *C. perfringens*.

(B) For the treatment of soft tissue infections (wounds and abscesses), dental infections, and osteomyelitis caused by susceptible strains of *S. aureus* and for soft tissue infections (deep wounds and abscesses), dental infections, and osteomyelitis caused by or associated with susceptible strains of *B. fragilis*, *P. melaninogenicus*, *F. necrophorum*, and *C. perfringens*.

(2) Cats—(i) *Amount*—(A) 5.0 to 15.0 mg/lb of body weight every 24 hours for a maximum of 14 days.

(B) 5.0 to 10.0 mg/lb of body weight every 24 hours for a maximum of 14 days.

(ii) *Indications for use*—(A) For the treatment of skin infections (wounds and abscesses) due to susceptible strains of *S. aureus*, *S. intermedius*, *Streptococcus* spp., deep wounds and abscesses due to susceptible strains of *Clostridium perfringens* and *Bacteroides fragilis*, and dental infections due to susceptible strains of *S. aureus*, *S. intermedius*, *Streptococcus* spp., *C. perfringens*, and *B. fragilis*.

(B) Aerobic bacteria: Treatment of soft tissue infections (wounds and abscesses) and dental infections caused by or associated with susceptible strains of *S. aureus*, *S. intermedius*, and *Streptococcus* spp. Anaerobic bacteria: Treatment of soft tissue infections (deep wounds and abscesses) and dental infections caused by or associated with susceptible strains of *C. perfringens* and *B. fragilis*.

Dated: July 17, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02-21733 Filed 8-26-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790-AG92

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule codifies the conditions for appropriate use and defines a nontraditional Defense contractor consistent with section 803 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Representatives of the military departments, Defense agencies and other DoD activities, have agreed on a final rule that amends the interim rule as a result of comments received. Audit policy is still being discussed and will be addressed by a separate rule, as appropriate.

EFFECTIVE DATE: This final rule is effective August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695-8567.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects.

Part 3 to 32 CFR was established to codify policy pertaining to prototype "other transactions" that have a

significant impact on the public and are subject to rulemaking. Additional guidance on prototype "other transactions" directed at Government officials can be found on the Defense Procurement web site at: <http://www.osd.dp.mil>.

A proposed rule was published in the **Federal Register** for public comment on November 21, 2001 (66 FR 58422-58425). A notice of public meeting was published in the **Federal Register** on March 4, 2002 (67 FR 9632) and held on March 27, 2002. The proposed rule addressed conditions on use of "other transactions" for prototype projects, the nontraditional Defense contractor definition and audit policy. Comments on the proposed rule were received from five respondents and approximately 50 representatives of Government and industry attended the public meeting. The majority of the written comments and discussion at the public meeting focused on the audit policy and will be addressed in a later rule. Only one respondent commented on the conditions of law and none commented on the definition of a nontraditional Defense contractor. The following summarizes the comments regarding the conditions of law and the disposition.

A. Consistency of Terms

One respondent identified the use of undefined terms that are confusing (e.g., "subordinate element of the party or entities," "awardee") and recommended expanding upon defined terms such a business unit and segment. The respondent recommended defined terms be consistently used through out the rule or definitions be added for undefined terms.

Response: The DoD agrees. The final rule includes additional definitions and made changes to ensure consistent use throughout the rule.

B. Applicability of Limitations

One respondent(s) questioned whether the statement "As a matter of policy, these same restrictions apply any time cost sharing may be recognized when using OTA" was intended to apply to all OTAs, not just OTAs for prototype projects. The respondent recommended it be deleted from this rule and be included in a new rule that applies to all OTA.

Response: The DoD agrees the statement was confusing. The final rule establishes "Limitations on Cost-Sharing" as a separate section and clarifies that as a matter of policy, the cost-sharing limitations will also be applied to other OT agreements for prototype projects that provide for non-Federal cost-share.

Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Public Law 104-4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

*Public Law 96-511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 *et seq.*)*

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR part 3

Government procurement, Transactions for prototype projects.

Accordingly, part 3 of 32 CFR is amended as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

1. The authority citation for part 3 is revised to read as follows;

Authority: Sec. 845, Pub. L. 103-160, 107 Stat. 1547, as amended.

2. Section 3.1 is revised to read as follows:

§ 3.1 Purpose.

This part consolidates rules that implement section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, 107 Stat. 1547, as amended, and have a significant impact on the public. Section 845 authorizes the Secretary of a

Military Department, the Director of Defense Advanced Research Projects Agency, and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants, or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

§§ 3.2, 3.3, and 3.4 [Redesignated as §§ 3.3, 3.4, and 3.7]

3. Section 3.2, 3.3, and 3.4 are redesignated as §§ 3.3, 3.4, and 3.7, respectively.

4. New § 3.2 is added to read as follows:

§ 3.2 Background.

"Other transactions" is the term commonly used to refer to the 10 U.S.C. 2371 authority to enter into transactions other than contracts, grants or cooperative agreements. "Other transactions" are generally not subject to the Federal laws and regulations limited in applicability to contracts, grants or cooperative agreements. As such, they are not required to comply with the Federal Acquisition Regulation (FAR) and its supplements (48 CFR).

5. Newly redesignated § 3.4 is amended to add new definitions in alphabetical order to read as follows:

§ 3.4 Definitions.

Agreements Officer. An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make related determinations and findings.

Awardee. Any business unit that is the direct recipient of an OT prototype agreement.

Business unit. Any segment of an organization, or an entire business organization which is not divided into segments.

* * * * *

Nontraditional Defense contractor. A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on:

(1) Any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

(2) Any other contract in excess of \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

Segment. One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

Senior Procurement Executive. The following individuals:

(1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

(2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

(3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition);

(4) The Directors of Defense Agencies who have been delegated authority to act as Senior Procurement Executive for their respective agencies.

Subawardee. Any business unit of a party, entity or subordinate element performing effort under the OT prototype agreement, other than the awardee.

6. New § 3.5 is added to read as follows:

§ 3.5 Appropriate use.

In accordance with statute, this authority may be used only when:

(a) At least one nontraditional Defense contractor is participating to a significant extent in the prototype project; or

(b) No nontraditional Defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

(1) At least one third of the total cost of the prototype project is to be paid out of funds provided by non-Federal parties to the transaction.

(2) The Senior Procurement Executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract.

7. New § 3.6 is added to read as follows:

§ 3.6 Limitations on cost-sharing.

(a) When a nontraditional Defense contractor is not participating to a significant extent in the prototype project and cost-sharing is the reason for using OT authority, then the non-Federal amounts counted as provided, or to be provided, by the business units of an awardee or subawardee participating in the performance of the OT agreement may not include costs that were incurred before the date on

which the OT agreement becomes effective. Costs that were incurred for a prototype project by the business units of an awardee or subawardee after the beginning of negotiations, but prior to the date the OT agreement becomes effective, may be counted as non-Federal amounts if and to the extent that the Agreements Officer determines in writing that:

(1) The awardee or subawardee incurred the costs in anticipation of entering into the OT agreement; and

(2) It was appropriate for the awardee or subawardee to incur the costs before the OT agreement became effective in order to ensure the successful implementation of the OT agreement.

(b) As a matter of policy, these limitations on cost-sharing apply any time cost-sharing may be recognized when using OT authority for prototype projects.

8. Newly redesignated § 3.7 is amended by revising the section heading to read as follows:

§ 3.7 Comptroller General access.

* * * * *

Dated: August 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-21267 Filed 8-26-02; 8:45 am]

BILLING CODE 5001-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 111-0050a; FRL-7261-7]

Revision to the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates excess emissions from malfunctions, startups, and shutdowns.

DATES: This rule is effective on October 28, 2002, without further notice, unless EPA receives adverse comments by September 26, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Gerardo Rios, Permits Office Chief (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington D.C. 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North central Avenue, Suite 201, Phoenix, AZ 85004.

A courtesy copy of the rule may be available via the Internet at <http://www.maricopa.gov/envsvc/air/ruledesc.asp>. However, this version of the rule may be different than the version submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
MCESD	140	Excess Emissions	09/05/01	02/22/02

On April 12, 2002 this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There is no previous version of Rule 140 in the SIP.

C. What Is the Purpose of the Submitted Rule?

The purpose of Rule 140 is to provide an owner and/or operator of a source who has been charged with a violation for excess emissions with an affirmative defense to a civil or administrative enforcement penalty. To qualify for the limited affirmative defense to a penalty action, the source must demonstrate compliance with listed criteria and reporting requirements set forth in Rule

140. Moreover, the affirmative defense does not apply to a SIP provision required by federally promulgated performance standards or emission limits, such as new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPS). The defense also does not apply to violations in areas where a single source has the potential to cause an exceedence of the National Ambient Air Quality Standards (NAAQS) or