MEMORANDUM FOR DISTRIBUTION

Subj: COMPTROLLER GENERAL ACCESS ON CERTAIN "OTHER TRANSACTION" AGREEMENTS FOR PROTOTYPE PROJECTS

Enc: (1) OUSD A&T memo dtd June 7, 2000

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Edward A. Callaway
Director, Policy & Resources
Acquisition & Business Management

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MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
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SUBJECT: Comptroller General Access on Certain "Other Transaction" Agreements for Prototype Projects

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, as amended, provides authority to the Department to enter into transactions pursuant to 10 U.S.C. 2371 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.

Section 801 of the National Defense Authorization Act for Fiscal Year 2000 establishes a requirement that an "other transaction" agreement for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records.

An Interim Rule to enact this law was coordinated with your agency and published in the Federal Register on June 5, 2000. This memorandum is issued to advise that the Interim Rule has been published (attached) and will be effective 30 days after publication or July 5, 2000. The Interim Rule must be used when developing solicitations issued on or after this date. The Interim Rule may be used to develop solicitations that will be issued or agreements awarded prior to this date.

Deidre A. Lee
Director, Defense Procurement

Attachment
As stated
§ 3.1 Purpose.

This part implements section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). It establishes the requirement for the inclusion of a clause in transactions other than contracts, grants or cooperative agreements 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.

§ 3.2 Applicability.

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371 that provides Comptroller General access to records when payments total an amount in excess of $5,000,000.

§ 3.3 Definitions.

Contracting activity. An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means an agency designated by the Secretary of Defense that has been delegated contracting authority through its agency charter.

Head of the contracting activity. The official who has overall responsibility for managing the contracting activity.

§ 3.4 Policy.

(a) Except as provided in paragraph (b) of this section, a clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371 that provide for total government payments in excess of $5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or subordinate element of a party or entity,
that has not entered into any other contract, grant, cooperative agreement or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(c) The head of the contracting activity (HCA) that is carrying out the agreement may waive the applicability of the Comptroller General access requirement if the HCA determines it would not be in the public interest to apply the requirement to the agreement. The waiver will be effective with respect to the agreement only if the HCA transmits a notification of the waiver to the Committees on Armed Services of the Senate and the House of Representatives, the Comptroller General, and the Director, Defense Procurement before entering into the agreement. The notification must include the rationale for the determination.

(d) The HCA must notify the Director, Defense Procurement of situations where there is evidence that the Comptroller General Access requirement caused companies to refuse to participate or otherwise restricted the Department's access to companies that typically do not do business with the Department.

(e) In no case will the requirement to examine records under the clause referenced in paragraph (a) of this section apply to an agreement where more than three years have passed after final payment is made by the government under such an agreement.

(f) The clause referenced in paragraph (a) of this section must provide for the following:

1. The Comptroller General of the General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the agreement or any entity that participates in the performance of this agreement that directly pertain to, and involve transactions relating to, the agreement.

2. Excepted from the Comptroller General Access requirement is any party to this agreement or any entity that participates in the performance of the agreement, or any subordinate element of such party or entity, that has not entered into any other contract, grant, cooperative agreement, or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

3. This clause shall not be construed to require any party or entity, or any subordinate element of such party or entity, that participates in the performance of the agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

4. The Comptroller General shall have access to the records described in this clause until three years after the date the final payment is made by the United States under this agreement.

5. The recipient of the agreement shall flow down this provision to any entity that participates in the performance of the agreement.


L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81
[OH 103-1b; FRL-4701-3]

Approval and Promulgation of Implementation Plans; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving sulfur dioxide redesignation requests submitted by the State of Ohio on March 20, 2000, for Coshocton, Gallia, and Lorain Counties. This request was first submitted on October 28, 1995. Ohio subsequently provided supplemental material to EPA in a letter dated September 14, 1999. On March 20, 2000, Ohio submitted final requests to redesignate Coshocton, Gallia, and Lorain Counties in attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO2).

EPA is also approving the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS for at least 10 years, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is approving state-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric-Coneville Plant; in Gallia County: Ohio Valley Electric Company-Kyger Creek Plant and Ohio Power-Gavin Plant; and in Lorain County: CEI-Avon Lake Plant, Ohio Edison-Edgewater Plant, U.S. Steel-Lorain Plant, and B.F. Goodrich Company-Lorain County Plant.

EPA is also approving other minor revisions to the state's rules for these three Counties. On November 23, 1999, EPA received one comment on the proposal to redesignate Coshocton, Gallia, and Lorain Counties. American Electric Power (AEP) encouraged EPA to take final action to approve the redesignation.

DATES: This rule is effective on July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 866-6701.

SUPPLEMENTARY INFORMATION:
Throughout this document wherever "we", "us", or "our" is used we mean EPA.

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I. General Information
1. What Action Is EPA Taking Today?

In this action, EPA is approving SO2 redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and
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