

decision in *Ohio Power*, discussed above), we will apply this rule change; our responsibility under the FPA to ensure that wholesale rates are just and reasonable, as discussed at length above, permits us to do nothing less. As to challenges to affiliate fuel prices recovered through the fuel adjustment clause prior to the effective date of this rule change (and which are not subject to the alternate ground for decision in *Ohio Power*, discussed above), we believe that whether we should apply this rule change or not is best decided in each individual case in which the issue arises rather than generically in the abstract.²¹

Finally, we do not believe that it is appropriate for the Commission, at this time, to address in the abstract the Registered Systems' concern regarding retroactivity in the event future legislation gives this Commission, rather than the SEC, authority to determine the reasonableness of the recovery in rates of affiliate fuel costs for registered public utility holding company systems.

III. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.²² The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.²³ No environmental consideration is necessary for the promulgation of a rule that involves electric rate filings that public utilities submit under sections

205 and 206 of the FPA and the establishment of just and reasonable rates.²⁴ Because this final rule involves such filings submitted under sections 205 and 206 of the FPA and the establishment of just and reasonable rates, no environmental consideration is necessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)²⁵ requires rulemakings to either contain a description and analysis of the impact the rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. Because most of the entities that would be required to comply with this rule are large public utilities that do not fall within the RFA's definition of small entities,²⁶ the Commission certifies that this rule will not have a "significant impact on a substantial number of small entities."

V. Information Collection Statement and Public Reporting Burden

The Office of Management and Budget (OMB) regulations in 5 CFR 1320.11 require that OMB approve certain information collection requirements imposed by an agency. This rule neither contains new information collection requirements nor significantly modifies any existing information collection requirements in Part 35;²⁷ therefore, it is not subject to OMB approval. However, the Commission will submit a copy of this rule to OMB for information purposes only.

Interested persons may send comments regarding collections of information to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, (202) 208-1415]; and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Telephone: (202) 395-3087. FAX: (202) 395-7285.

VI. Effective Date and Congressional Notification

This Final Rule will take effect on November 6, 1998. The Commission has

determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.²⁸ The Commission will submit the rule to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register**.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Electricity, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,
Secretary.

In consideration of the foregoing, the Commission amends part 35, chapter I, title 18, *Code of Federal Regulations*, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Section 35.14 is amended by revising the second sentence of paragraph (a)(7) to read as follows:

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) * * *

(7) * * * Where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, and where the price of such fuel has been approved by that regulatory body, such costs shall be presumed, subject to rebuttal, to be reasonable and includable in the adjustment clause.

* * *

* * * * *

[FR Doc. 98-26888 Filed 10-6-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 655

Radiation Sources on Army Land

AGENCY: Office of the Director of Army Safety, Department of the Army, DoD.

ACTION: Final rule.

²⁸ 5 U.S.C. 804(2).

²¹ The fuel adjustment clause allows public utilities to pass through to their ratepayers increases or decreases in the cost of their fuel, without having to make separate filings to reflect each change in fuel cost, and without having to obtain prior Commission review of each change in fuel cost. *Missouri Public Service Company*, Opinion No. 327, 48 FERC ¶ 61,011 at 61,078 (1989); *Fuel Adjustment Clauses in Wholesale Rate Schedules*, 52 FPC 1304, 1305-06 (1974); *see also* *Public Service Co. of New Hampshire v. FERC*, 600 F.2d 944, 947, 952 (D.C. Cir.), *cert denied*, 444 U.S. 990 (1979). Consequently, the Commission has sanctioned after-the-fact review and refunds in later proceedings. *See, e.g., Central Vermont Public Service Corporation*, 44 FERC ¶ 61,127 at 62,027 (1988); *Alamito Co.*, 33 FERC ¶ 61,286 at 61,574 (1985); *see also Louisiana Power & Light Company*, Opinion No. 366, 57 FERC ¶ 61,101 at 61,388-89 (1991). Without later review and the ability to order refunds, overcharges collected through the fuel adjustment clause would be exempt from all scrutiny and refunds. *See Kansas Municipal and Cooperative Electric Systems*, 16 FERC ¶ 61,227 at 61,488, *reh'g denied*, 17 FERC ¶ 61,141 (1981).

²² Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-90 ¶ 30,783 (1987).

²³ 18 CFR 380.4.

²⁴ 18 CFR 380.4(15).

²⁵ 5 U.S.C. 601-12.

²⁶ 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a small business concern as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

²⁷ These requirements were previously submitted to OMB and assigned control number 1902-0096.

SUMMARY: This final rule changes the approval authority for Army radiation permits from Commander, U.S. Army Materiel Command (formerly, the U.S. Army Materiel Development and Readiness Command) to local installation commanders. Delegating the approval authority to the local installation commanders will reduce delays in processing permits while enhancing personal safety of military personnel, civilian employees and the public. The revision includes descriptions of ionizing radiation sources that require Army radiation permits and criteria for application approval. The rule adds the requirement for an Army radiation permit whenever a non-Army agency wants to bring onto Army property a machine-produced ionizing radiation source capable of producing a high radiation area.

EFFECTIVE DATE: October 7, 1998.

ADDRESSES: Headquarters, Department of the Army, Office of the Director of Army Safety, ATTN: DACS-SF, RM 3D253, Chief of Staff, 200 Army Pentagon, Washington, DC 20310-0200.

FOR FURTHER INFORMATION CONTACT: Colonel Robert Cherry, telephone: (703) 695-7291.

SUPPLEMENTARY INFORMATION:

a. Background

Basic information on approval of Radiation Sources on Army Land was previously published in the proposed rule section of the **Federal Register**, Vol. 63, No. 132, pages 37296-37297, Friday, July 10, 1998 for public comment.

b. Comments and Responses

Comment: Only one respondent provided comment. An individual representing himself strongly supported the proposed rule on the basis that it improved timely approval to possess radiation sources on Army land.

Response: The respondent supports the Army intent of this rule.

Executive Order 12866

This rule is not a major rule as defined under Executive Order 12866. The rule does not:

- a. Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- b. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- c. Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or
 d. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Regulatory Flexibility Act

This rule was reviewed with regard to the requirements of the Regulatory Flexibility Act. The rule does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Pursuant to Section 3507(d) of the Paperwork Reduction Act of 1995, the reporting provisions of this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0702-0109.

List of Subjects in 32 CFR Part 655

Environmental protection, Radiation protection, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 655 is revised to read as follows:

PART 655—RADIATION SOURCES ON ARMY LAND

Authority: 10 U.S.C. 3012.

§ 655.10 Use of radiation sources by non-Army entities on Army land (AR 385-11)

(a) Army radiation permits are required for use, storage, or possession of radiation sources by non-Army agencies (including civilian contractors) on an Army installation. Approval of the installation commander is required to obtain an Army radiation permit. For the purposes of this section, a radiation source is:

- (1) Radioactive material used, stored, or possessed under the authority of a specific license issued by the Nuclear Regulatory Commission (NRC) or an Agreement State (10 CFR);
- (2) More than 0.1 microcurie (uCi) 3.7 kilobecquerels (kBq) of radium, except for electron tubes;
- (3) More than 1 uCi (37 kBq) of any naturally occurring or accelerator produced radioactive material (NARM) other than radium, except for electron tubes;
- (4) An electron tube containing more than 10 uCi (370 kBq) of any naturally occurring or accelerator produced NARM radioisotope; or
- (5) A machine-produced ionizing-radiation source capable of producing an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the radiation

source or from any surface that the radiation penetrates.

(b) The non-Army applicant will apply by letter with supporting documentation (paragraph c of this section) through the appropriate tenant commander to the installation commander. Submit the letter so that the installation commander receives the application at least 30 calendar days before the requested start date of the permit.

(c) The Army radiation permit application will specify start and stop dates for the Army radiation permit and describe for what purposes the applicant needs the Army radiation permit. The installation commander will approve the application only if the applicant provides evidence to show that one of the following is true.

(1) The applicant possesses a valid NRC license or Department of Energy (DOE) radiological work permit that allow the applicant to use the source as specified in the Army radiation permit application;

(2) The applicant possesses a valid Agreement State license that allows the applicant to use radioactive material as specified in the Army radiation permit application, and the applicant has filed NRC Form-241, Report of Proposed Activities in Non-Agreement States, with the NRC in accordance with 10 CFR part 150, § 150.20 (an Army radiation permit issued under provisions of this section will be valid for no more than 180 days in any calendar year);

(3) For NARM and machine-produced ionizing radiation sources, the applicant has an appropriate State authorization that allows the applicant to use the source as specified in the Army radiation permit application or has in place a radiation safety program that complies with Army regulations; or

(4) For overseas installations, the applicant has an appropriate host-nation authorization as necessary that allows the applicant to use the source as specified in the Army radiation permit application and has in place a radiation safety program that complies with Army regulations. (Applicants will comply with applicable status-of-forces agreements (SOFAs) and other international agreements.)

(d) All Army radiation permits will require applicants to remove all permitted sources from Army property by the end of the permitted time.

(e) Disposal of radioactive material by non-Army agencies on Army property is prohibited. However, the installation commander may authorize radioactive releases to the atmosphere or to the sanitary sewerage system that are in

compliance with all applicable Federal, DoD, and Army regulations. (The installation commander also will give appropriate consideration to State or local restrictions on such releases.)

Raymond J. Fatz,

*Deputy Assistant Secretary of the Army,
(Environment, Safety and Occupational
Health) OASA (I, L&E).*

[FR Doc. 98-26653 Filed 10-6-98; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 200

Organization, Functions, and Procedures; Freedom of Information Act

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is revising the Forest Service's Freedom of Information Act (FOIA) procedures to permit the Chief of the Forest Service to designate Washington Office staff directors to receive requests for records, extend the reply deadline period, make discretionary releases of records exempt from mandatory disclosure, and deny records pursuant to the Act. The intent is to achieve more efficiency and to balance the assignment of the FOIA workload. Since this rule change relates solely to internal administration and the carrying out of the Secretary's executive function of delegating authority to agency heads, notice and comment prior to adoption of this rule are not necessary.

EFFECTIVE DATE: This rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Charboneau, Freedom of Information Act Officer, MAIL STOP 1143, Forest Service, USDA, P.O. Box 6090, Washington, D.C. 20090-6090. Telephone: (703) 235-9488.

SUPPLEMENTARY INFORMATION: Forest Service rules governing requests for information made pursuant to the Freedom of Information Act are set out in 36 CFR 200.7 and 200.8. In § 200.7, Request for records, the Deputy Chief for the program area involved is authorized to receive and act on requests and to extend the 20-day administrative deadline for reply, to make discretionary releases of material not exempt from mandatory disclosure, and to deny records requested. Under § 200.8, appeals of details are made to and rendered by the Chief or other

official to whom such authority is delegated. Through the Forest Service Manual Chapter 6270, the Chief has delegated all appeals to the Deputy Chief for Operations.

An Internal Forest Service review reveals that this practice has resulted in a disproportionate appeal workload being assigned to the Deputy Chief for Operations. In response to this finding, the Chief has determined that all Deputy Chiefs should share in the appeal decision workload. This reassignment necessitates a change in who may respond to initial requests. This final rule revises § 200.7(a) to permit the Washington office Staff Directors to exercise the authority to respond to initial requests and make other decisions authorized in § 200.7(b). In addition, the final rule also adds the Direct of the Institute of Tropical Forestry to the list of field officers authorized under paragraph (a) to respond to initial requests. This position was inadvertently omitted from a June 19, 1997, amendment updating Forest Service unit names and addresses. The revised delegations of authority to staff Directors, and Deputy Chiefs for FOIA responses to requests and appeals, respectively, will be issued by the Chief in an amendment to Chapter 6270 of the Forest Service Manual, which is the principal source of internal agency procedure (36 CFR 200.4).

In addition, in order to insure uniformity in treatment by the various program and staff offices handling appeals, the Forest Service is formalizing current practice, in a revision of 36 CFR 200.8, by requiring that all proposed responses to appeals be reviewed by the Forest Service Freedom of Information Act/Privacy Act Officer before signature by the Deputy Chiefs.

This final rule involves matters of internal agency procedure, namely the assignment and allocation of work and the delegation of authority by the Chief of the Forest Service. Therefore, pursuant to 5 U.S.C. 553(a)(3)(A), this final rule is exempt from the notice and comment requirements of 5 U.S.C. 553(b). Accordingly, this rule is also exempt from review under Executive Order 12866 on Regulatory Review, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Congressional review requirements of the Small Business Regulatory Enforcement Act of 1996 (Pub. L. No. 104-121, Title II, Subtitle E).

In accordance with Executive Order 12630, regarding Governmental Action and Interference with Constitutionally Protected Property Rights, the Forest Service finds that this final rule,

involving matters of internal agency procedure in connection with the processing of FOIA requests and appeals, implicates no takings, in that it does not propose or implement licensing, permitting, or other conditions, requirements, or limitations on private use, nor does it require dedications or exactions from owners of private property.

The Forest Service has reviewed this final rule in accordance with Executive Order 12988, Civil Justice Reform, and has determined that this rule will preempt all State and local laws and regulations that are in conflict with this rule; (2) this rule will have no retroactive effect; and (3) parties will not be required to participate in administrative proceedings before filing suit in court challenging the rule. The rule meets the applicable standards provided in section 3(b) of the Executive Order.

Finally, this rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 200

Administrative practice and procedure, Freedom of information, and Organization and functions (Government agencies).

Therefore, for the reasons set forth in the preamble, Part 200 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION, FUNCTIONS, AND PROCEDURES

1. The authority citation for Part 200 continues to read:

Authority: 5 U.S.C. 552; 7 U.S.C. 6706; 16 U.S.C. 472, 521, 1603, and 2101 *et seq.*

2. Section 200.7 is amended by revising paragraph (a) to read as follows:

§ 200.7 Request for records.

* * * * *

(a) The Regional Forester, Regional Special Agent in charge, Research Station Director, Area Director, and Institute Director at the field locations and addresses listed in § 200.2; the Director of Law Enforcement and Investigations, other Staff Directors, or other officials whom the Chief may authorize, located in the Washington Office, are authorized to receive requests for such records, to make