a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Approval of expenses and assessment rate for the Bartlett pear program should be expedited because the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of these actions until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 931

Bartlett pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 931.226 is added to read as follows:

Note: This section will not appear in the annual *Code of Federal Regulations.)*

§ 931.226 Expenses and assessment rate.

Expenses of $91,062 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.03 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1992. Unexpended funds from the 1990–91 fiscal period may be carried over as a reserve.

Dated: August 12, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–19623 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1485

Cooperative Agreements for the Development of Foreign Markets for Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The regulations set forth in subpart B are applicable to the Market Promotion Program authorized by section 203 of the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, enacted November 28, 1990. This program is intended to maintain, develop, and expand commercial markets for U.S. farm products and to assist exporters affected by unfair trade practices.

DATES: This interim rule is effective August 16, 1991. Comments must be received in writing within 60 days of the effective date of this interim rule (October 15, 1991).

ADDRESS: Send comments to the Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenues, SW, Washington, DC 20250–1000. Telephone: (202) 447–5521.

FOR FURTHER INFORMATION CONTACT: Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC, 20250–1000. Telephone: (202) 447–5521. The Regulatory Impact Analysis concerning this rule is available on request from the Director, Planning and Evaluation Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1000. Telephone: (202) 245–5198.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as major, with an annual impact on the economy of $100 million or more. It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required under 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It is also not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (see the Notice related to 7 CFR part 3015, subpart V, 48 FR 29115). This interim rule has been submitted to the Office of Management and Budget (OMB) for review. It is expected that OMB will assign it a control number for the purpose of the Paperwork Reduction Act.

Background

Statutory Background

Section 203 of the Agricultural Trade Act of 1978, as amended by section 1531 of 1990 Act, directs the CCC to carry out a program to encourage the development, maintenance and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations. Such assistance is to be provided on a priority basis in the case of unfair trade practices and may be provided in the form of CCC funds or CCC owned commodities.

In order to participate in this program, an "eligible trade organization" must be: (1) A United States agricultural trade organization or regional State-related organization that promotes the export and sale of agricultural commodities and that does not stand to profit directly from specific sales; (2) a cooperative organization or a State agency that promotes the export and sale of agricultural commodities; or (3) a private organization that promotes the sale of agricultural commodities should the Secretary of Agriculture determine that such organization would significantly contribute to United States export market development. Generally, activities receiving cost-share assistance may promote agricultural exports on a generic or brand identified basis. However, any assistance for brand promotion is limited to no more than 50 percent of the cost of implementing the activities, except in the case of commodities with respect to which there has been a favorable decision by the United States Trade Representative under section 301 of the Trade Act of 1974, or in the case of participants that received assistance under section 1124 of the Food Security Act of 1985 (the Targeted Export Assistance Program (TEA)) at a higher level. In the latter case, assistance must be phased down to a maximum of 50 percent in equal installments over a 5-year period.

Participants in the program are required to submit a marketing plan (referred to in the regulations as an "activity plan") describing the activities to be carried out with respect to which assistance is to be provided that details the manner in which funds will be expended, establishing specific marketing goals, and other information, as required by CCC.

Initiating Program Activities

CCC has established the Market Promotion Program (MPP) to carry out the mandate of section 203 of the Agricultural Trade Act of 1978. The program will be implemented through two basic types of agreements: Market Promotion Program Agreements (MPP Agreements) and Export Incentive Program/Market Promotion Agreements (EIP/MPP Agreements). EIP/MPP Agreements are only entered into with U.S. commercial entities for brand promotion activities when CCC determines that brand promotion would significantly contribute to export market development. Generally, programs will be initiated as follows:

1. CCC will annually announce the total available funding for MPP and EIP/MPP agreements through a Notice in the **Federal Register**. The Notice will invite applications for funding to be submitted to CCC by a specified date containing the information required by the regulations. At this time, any U.S. commercial entity can apply for CCC resources to enter into an EIP/MPP Agreement. However, before CCC enters into any specific EIP/MPP Agreement, a subsequent announcement will be made as to the commodities that CCC determines, based upon submissions received, would significantly contribute to export market development. Any interested U.S. commercial entity must then submit a specific application for an EIP/MPP Agreement containing all required information if it has not already done so. In this manner, CCC will assure that all interested entities have an equitable opportunity to participate.

2. Applications are reviewed and the request for funding may be rejected or adjusted based upon the criteria set forth in the regulations. CCC will issue a public announcement concerning the allocations of resources among the applicant organizations. CCC and the successful applicant organization (Participant) will then enter into a specific agreement.

3. The participant must submit an annual activity plan (the initial activity plan may be submitted prior to signing the agreement) proposing specific market development activities against which expenditures will be reimbursed with CCC resources. The regulation contains detailed requirements concerning the contents of an activity plan. Generally, only activities approved in the activity plan are eligible for reimbursement.

4. CCC reviews the activity plan and may require revisions thereto prior to approval. The participant will be notified in writing of the approval activity plan and any required revisions.

Significant Program Provisions

Following is a listing of some significant provisions made applicable to MPP or EIP/MPP Agreements by virtue of these regulations that were not part of prior market development programs administered by the Foreign Agricultural Service or CCC. Entities that have participated in the Cooperator program, the TEA program, or currently have MPP agreements should carefully review all regulations.

1. Participants in MPP Agreements will be required to provide a minimum level or resource contribution of no less than 5 percent of expended CCC resources.

2. CCC resources will not be used for acquisition, maintenance or insurance of residential property.

3. A limitation is established on the use of CCC resources for reimbursing salary and allowance expenses of MPP participant overseas employees and consultants.

4. Reimbursement for travel is made subject to the rules of the standard U.S. travel regulations, 41 CFR part 301.

5. Limitations are established on reimbursement for demonstration or training activities.

6. Except as stated below, reimbursement for any branded promotion, whether in an EIP/MPP agreement or part of a MPP agreement, will be no higher than 50 percent of the cost of the eligible expense. However, the actual percentage of reimbursement will be based upon the percentage of U.S. agricultural commodity content of the brand product being promoted. Thus, if a product being promoted has a 30 percent U.S. agricultural commodity content, reimbursement will be made at 30 percent of the cost of the approved expense but, in no event, will reimbursement exceed 50 percent.

There are two basic exceptions to this general reimbursement rule. First, if a participant had received reimbursement at a rate higher than 50 percent of the eligible expense during 1990 under the TEA program, the rate of reimbursement will be phased down beginning with the 1991 EIP/MPP program to 50 percent of the cost of the eligible expense over a five year period. At the end of the five year period, the participant would be reimbursed as stated above.

Second, in the case of commodities with respect to which:

1. There has been a favorable decision by the U.S. Trade Representative under section 301 of the Trade of 1974;

2. Action taken as a result of such favorable decision has not been terminated; and,

3. The volume of trade has not maintained the same market share or has not increased, reimbursement may be made at a rate higher than the percentage of U.S. content in product being promoted, and even higher than 50 percent of the cost of the eligible activity. The rate of reimbursement to apply in such circumstances will be the rate determined by CCC to be necessary to undertake activities to effectively encourage the development, maintenance, and expansion of commercial markets for the product.

It is intended that a "favorable decision" refers to an affirmative determination by the U.S. Trade Representative, with respect to the agricultural commodity being promoted, that:

1. The rights of the United States under any trade agreement are being denied; or,

2. An act, policy, or practice of a foreign country:

(i) Violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or,

(ii) Is unjustifiable and burdens or restricts United States commerce.

The acceptance of a petition for investigation by the U.S. Trade Representative is not sufficient. This eligibility for a higher rate of reimbursement will continue until the U.S. Trade Representative terminates action taken in response to the favorable decision made under section 301 of the Trade Act of 1974.

Effective Date

Section 404 of the Agricultural Act of 1978, as amended, requires that regulations implementing the Market Promotion Program be issued within 180 days after enactment of the Food, Agriculture, Conservation, and Trade Act of 1990. This rule is made effective on the date of publication in the **Federal Register**.

As stated in § 1485.29, these regulations will only apply to new activities, or any revisions to existing activities, that are approved on or after October 1, 1991. Therefore, present participants will not be required to revise previously approved activity plans in order to comply with the new rules and should have sufficient time to take the new rules into consideration in the planning of future activities.

Comments on the provisions of these regulations are invited and must be received within 60 days of the effective date. Appropriate changes will be implemented through the rulemaking process. Upon adoption of a final rule to replace this interim rule, CCC will provide a detailed analysis of all comments received that have a bearing on the Market Promotion Program.

Information Collection Requirements

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget for approval under the provision of 44 U.S.C. Chapter 35. Public reporting for these collections is estimated at 80 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM room 404–W, Washington, DC 20250–1000, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

Accordingly, part 1485 of title 7 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 1485 is transferred to subpart A and continues to read as follows:

Authority: Sec. 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714(c)(f)).

2. A subpart A heading is added immediately preceding § 1485.1 to read as follows:

SUBPART A—TARGETED EXPORT ASSISTANCE PROGRAM

§ 1485.1 [Amended]

3. Section 1485.1 is amended by removing the word "part" and adding, in its place, the word "subpart".

4. A new subpart B is added to part 1485 to read as follows:

Subpart B—Market Promotion Program

Authority: Sec. 203, 402–404 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5623, 7 U.S.C. 5662–5664).

Subpart B—Market Promotion Program

§ 1485.10 Purpose and scope.

This subpart sets forth policies and requirements with respect to Commodity Credit Corporation (CCC) operation of the Market Promotion Program (MPP).

§ 1485.11 Definitions.

For purposes of this subpart:

(a) *Activity* means a specific market development effort undertaken in a foreign market by a program participant the expenses of which may be reimbursed with CCC resources or claimed as a contribution.

(b) *Activity Plan* means the document which describes a participant's export promotion strategy and expenses with respect to activities that may be reimbursed with CCC resources or claimed as contributions. Activities specified in an activity plan are designed on an annual basis to move either gradually or immediately toward meeting the objectives of the strategic plan. "Activity Plan" is used in lieu of the term "Marketing Plan" found in section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624).

(c) *Administrative Expense* means an expenditure incurred by a participant necessary for administration of an activity plan, as differentiated from an expenditure incurred in carrying out the plan's activities.

(d) *Administrator* means the Administrator, FAS, USDA, or his designees. The Administrator is also a Vice President of the CCC.

(e) *Affiliate* or *Affiliated Organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the participant has an investment other than in a mutual fund.

(f) *Agricultural Commodity* or *Commodity* means any food, feed, fiber or wood product; and, fish, harvested by a vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country, or harvested from a U.S. aquaculture farm.

(g) *Agricultural Product* or *Product* means any article processed, manufactured, or otherwise derived wholly or in part from one or more agricultural commodities.

(h) *APAR* means activity plan amendment request.

(i) *Attache/Counselor* means the FAS employee having responsibility for representing USDA interests in the foreign country in which promotional activities will be conducted.

(j) *Brand Product* or *Brand Commodity* means a privately owned brand name agricultural commodity or product.

(k) *Brand Promotion* means an activity which promotes one or more brand commodities or brand products.

(l) *CCC* means the Commodity Credit Corporation.

(m) *CCC Resources* means the funds or CCC commodity certificates made available to MPP and EIP/MPP participants under a MPP agreement or an EIP/MPP agreement.

(n) *Consumer Promotion* means an activity intended to positively influence consumer preferences toward a commodity or product.

(o) *Constraint* means an impediment to U.S. exports of an agricultural commodity or product in a specific market.

(p) *Contribution* means an expense incurred by a MPP participant, U.S. industry or foreign third party, as budgeted for and described in an approved activity plan, that is not reimbursed with CCC resources or by any other entity.

(q) *Division Director* means the Director of a Commodity Division, Commodity and Marketing Programs, FAS, USDA, having responsibility for the agricultural commodity or product covered by an MPP or an EIP/MPP agreement.

(r) *EIP/MPP* means the Export Incentive Program/Market Promotion Program.

(s) *EIP/MPP Agreement* means the written agreement between CCC and the EIP/MPP participant.

(t) *EIP/MPP Participant* means a U.S. commercial entity entering into an EIP/MPP agreement.

(u) *FAS* means the Foreign Agricultural Service, USDA.

(v) *Fiscal Year* means the period October 1 through September 30.

(w) *Foreign Third Party* means a foreign government or private organization that has entered into a written agreement with a participant to assist in promoting the export of a commodity or product.

(x) *Incurred Expense* means an expenditure by a participant to carry out an approved activity plan. An expense is deemed to be "incurred" on the date the participant receives the goods or services ordered.

(y) *MPP* means the Market Promotion Program. References to MPP do not include the EIP/MPP except as may be specifically provided for in this Subpart.

(z) *MPP Agreement* means the written agreement between CCC and the MPP participant.

(aa) *MPP Participant* means any nonprofit agricultural trade association, State Group, cooperative organization, or State agency that enters into a MPP agreement within the scope of this subpart.

(bb) *MPP Participant Overseas Office* means an entity established by a MPP participant in a foreign country for purposes of administering an approved activity plan and otherwise representing the MPP participant in that country.

(cc) *Participant* means any EIP/MPP or MPP participants. EIP/MPP participant refers only to a participant in the EIP/MPP and MPP participant refers only to a participant in the MPP.

(dd) *Research* means an activity to provide information that will enable the participant to identify market opportunities and assist in the future in developing an activity plan.

(ee) *Sales Team* means a group of individuals engaged in activities intended to result in specific sales by its members.

(ff) *State Group* means an association of State departments of agriculture.

(gg) *Strategic Plan* means a written outlook covering three or more forward years which describes the overall export objectives for a commodity or product in each country market to be promoted, the specific market conditions/constraints affecting exports of the commodity, the general approach needed to overcome such constraints, and the expected results of overcoming them through use of CCC resources. A strategic plan is required with each application for CCC resources.

(hh) *Technical Assistance* means an activity intended to address technical problems related to sale, movement, processing, marketing or use of agricultural commodities or products.

(ii) *Trade Servicing* means an activity intended to influence foreign traders, importers, wholesalers and retailers involved in the import, distribution and marketing of an agricultural commodity or product.

(jj) *Trade Team* is a group engaged in activities to promote the interests of the entire agricultural sector represented by the MPP participant.

(kk) *Unfair Trade Practice* means any act, policy, or practice of a foreign government that: (1) Violates, is inconsistent with, or otherwise denies benefits to the United States under any trade agreement to which the United States is a party; (2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce; or, (3) is otherwise inconsistent with a favorable section 301 determination by the United States Trade Representative.

(ll) *U.S. Commercial Entity* means any agricultural cooperative or for profit U.S. firm that is engaged in the export and/or promotion of an agricultural commodity or product.

(mm) *U.S. Industry Contribution* means the U.S. dollar value of a cash or in-kind good or service (e.g., personnel, materials, facilities, services, or supplies) provided by a U.S. industry entity in direct support of an approved activity and for which such entity will not be reimbursed by another party.

(nn) *USDA* means United States Department of Agriculture.

§ 1485.12 General program requirements and application procedures.

(a) *Agreements.* MPP and EIP/MPP agreements are intended to encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities and products through cost-share assistance. Participants may undertake activities directly or through a foreign third party and are accountable for any expenses incurred in carrying out such activities. The MPP participant must contribute cash or in-kind resources toward administration and/or completion of approved activities in accord with specific contribution obligations detailed in the activity plan approval letter. EIP/MPP agreements are limited to the promotion of specific brand commodities or brand products. EIP/MPP agreements are entered into between CCC and a U.S. commercial entity when CCC has determined such agreement would significantly contribute to export market development. CCC will make CCC commodity certificates, or at the option of CCC, U.S. dollar funds, available to participants to conduct activities under MPP or EIP/MPP agreements.

(b) *Application Procedures*—(1) *General.* CCC announces the MPP and EIP/MPP annually through publication of a Notice in the **Federal Register**. Prospective participants must apply directly to CCC by the deadline specified in the Notice. CCC may require applicants for EIP/MPP agreements to work directly through a MPP participant.

(2) *Contents.* MPP and EIP/MPP applicants must submit a written proposal which includes:

(i) A description of the agricultural commodity, product, or brand product for which CCC resources are being requested, including the percentage of U.S. origin agricultural commodity by weight, exclusive of added water;

(ii) The anticipated export availability of the agricultural commodity, product, or brand product over the duration of the proposed agreement;

(iii) The volume and value of U.S. exports of the agricultural commodity, product or brand product during the most recent three year prior for which data are available and the source of such information;

(iv) Description of the unfair trade practice, if any, affecting trade in the agricultural commodity, product or brand product;

(v) A strategic plan;

(vi) For nonprofit organizations, a description of the organization, its membership, and its membership criteria; its Articles of Incorporation and Internal Revenue tax exempt identification number, and the identity of affiliated organizations and their involvement in export of the commodity or product described in the application. Also include information concerning prior export promotion and other experience which evidences the organization's ability to manage a program of the size proposed, and the staff year equivalent, by position, of U.S. personnel who will be directly responsible for operating the proposed program;

(vii) The anticipated dollar value of MPP participant contributions, the total contribution as a percent of requested CCC resources and its source. Applicant nonprofit organizations must also describe any amounts expected to be received from other Federal or State government programs for the same or similar purposes for which CCC resources are being requested and if such amounts will be claimed as MPP participant contributions (the percentage contribution obligation of the participant can be no less than that specified in the application, regardless of the level of funding which is approved by CCC);

(viii) The amount of CCC resources requested; and,

(ix) A statement as to whether the duration of the proposal is for two or more years (a "multiyear" proposal), detailing why the proposal should be funded with CCC resources on such a multiyear basis.

(x) Other information, as determined appropriate by CCC, to effectively administer and evaluate program operations, such as market share and export sales goals, types of activities and related goals, proposed expenditures by country market, and total allocation of CCC funding necessary to meet total proposed expenditure levels.

(3) Additional application procedures for applicants for EIP/MPP agreements are specified in § 1485.13(c).

(4) Additional application procedures for applicants for MPP agreements desiring to undertake brand promotion activities are specified in § 1485.14(e).

(5) *Signatures.* The application must bear the original signature of the Chief Executive Officer (CEO) of the corresponding organization or a designee so authorized for that purpose in writing by the CEO.

(6) *Submission.* Send applications to CCC at the following address: Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1485.13 Special requirements of the Export Incentive Program.

(a) *General.* The provisions in this section pertain only to the EIP/MPP and are in addition to provisions specified in § 1485.12.

(b) *Agreements.* (1) CCC enters into EIP/MPP agreements only with U.S. commercial entities which either own the brand(s) of the product(s) to be promoted or have sole agency agreements for such brand(s) in each of the markets in which CC resources will be used.

(2) For any given expense eligible for reimbursement under an EIP/MPP agreement, the percentage of such expense for which CCC will reimburse the participant shall equate to the percentage of the U.S. origin content of the commodity or product being promoted for which such expense was incurred, but in any event not more than 50 percent. "U.S. origin content" is the percent weight of the U.S. produced agricultural commodity content. excluding added water, of the total net weight of the brand commodity or product being promoted.

(3) Notwithstanding paragraph (b)(2) of this section, if during fiscal year 1990 the U.S. commercial entity was reimbursed at more than 50 percent for eligible expenses under the Targeted Export Assistance Program authorized by section 1124 of the Food Security Act of 1985, reimbursement under an EIP/MPP agreement shall be at such higher rate reduced in equal increments each year over a five year period beginning fiscal year 1991, to a level of 50 percent by fiscal year 1995.

(4) Notwithstanding paragraph (b)(2) of this section, a commodity may be eligible for reimbursement above 50 percent if:

(i) With respect to the commodity being promoted there has been a favorable decision by the U.S. Trade Representative under section 301 of the Trade Act of 1974 and the U.S. Trade Representative has not terminated action taken as a result of such favorable decisions; and,

(ii) The participant shows, in comparison to the year the unresolved section 301 case was initiated, that the commodity's total export volume has not maintained market share or increased.

(5) Should the commodity qualify for a rate of reimbursement above 50 percent, as specified in the preceding paragraph, the actual rate of reimbursement shall be a rate determined by CCC to be necessary to undertake activities to effectively encourage the development, maintenance, and expansion of commercial markets for the product or commodity which is the subject of the unresolved section 301 decision.

(6) An EIP/MPP participant may undertake promotional activities directly or through a foreign third party provided the participant remains fully responsible and accountable for any reimbursements with CCC resources related to expenses incurred in such activities.

(7) An EIP/MPP agreement is entered into with CCC when CCC determines:

(i) Such an agreement with a U.S. commercial entity could contribute to development, expansion, or maintenance of exports of the corresponding agricultural commodity or product;

(ii) There is sufficient U.S. industry need for a brand promotion program; and,

(iii) There is no MPP participant interested in or capable of undertaking the brand promotion.

(c) *Special application procedures for U.S. commercial entities.* Any U.S. commercial entity can initially apply for CCC resources to establish an EIP/MPP for an agricultural commodity or product. Once approved, such allocation will be announced to provide all U.S. commercial entities an equitable opportunity to participate in the EIP/MPP. Interested U.S. commercial entities (including the initial applicant firm) must separately apply for participation in the program. Applications are submitted to the Division Director. These provisions are in addition to requirements specified in § 1485.12(b).

(d) *Eligible expenses and reimbursement procedures.* Eligible expenditures and reimbursement procedures are those found in § 1485.17 and as described and budgeted in a CCC approved activity plan.

§ 1485.14 Special requirements of the Market Promotion Program.

(a) *General.* (1) The provisions of this section are in addition to those specified for the MPP in § 1485.12.

(2) A MPP participant must be a non-profit agricultural trade organization, an agricultural cooperative, State agency, or a State group, and does not stand to profit directly from specific sales of the agricultural commodity or product for which a MPP allocation is requested. Agreements with U.S. commercial entities will be made under the EIP/MPP.

(3) It is the policy of CCC to ensure that benefits generated by agreements for the development of foreign markets are as broadly distributed throughout the relevant agricultural sector as possible and, in particular, that no commercial entity gains an unfair advantage or benefit from activities conducted under the agreement, whether funded with CCC resources or industry contributions.

(4) When requested by CCC, a MPP participant entering into a program agreement will furnish to CCC for approval its criteria for selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to such agreements, such as brand promotions, trade teams, sales teams, and trade fairs. It must also submit its criteria for the selection of U.S. commercial entities to participate in brand promotions. Such criteria must ensure participation on an equitable basis by a broad cross section of the U.S. industry. If CCC requests submission of these criteria, the MPP participant shall not make any selections using criteria disapproved by CCC.

(b) *Dissemination of information.* A MPP participant must provide on a timely basis, upon request of any U.S. entity, information developed and produced with its contributions or CCC resources under the terms of their agreement with CCC. Any fee charged in connection with the provision of this information shall not exceed the expenses incurred in assembling, duplicating and distributing the materials.

(c) *Export sales limitations.* (1) MPP participants and their affiliates shall not during the term of an agreement make export sales of agricultural commodities and products of the kind promoted with CCC resources under the terms of the agreement.

(2) MPP participants and their affiliates shall not assess fees for services provided to exporters in facilitating an export sale if the sale was promoted using CCC resources. This applies to activities such as discussions with potential buyers or solicitation of sales, including activities by sales teams and at trade fairs rather than those of a more general promotional nature. This paragraph does not apply to checkoffs or membership fees based on sales when such assessments are a condition of membership in the participating organization.

(3) Any entity involved in approved program activities, whether or not a program participant, shall not use the activities to promote its private self interest or conduct private business, except as a member of a sales team or as part of a CCC approved brand promotion.

(d) *MPP participant contributions.* The MPP participant's contribution requirement will be specified in the letter approving the annual activity plan.

(1) If the MPP participant has reason to believe that its total contribution will be less than the amount or percentage specified in the approval letter, it must do one of the following:

(i) Reduce its expenditures of CCC resources such that its contributions as a percent of CCC resources expended is maintained; or,

(ii) Request approval of a reduction in the level or rate of contribution by submitting an APAR to CCC. In any event, a participant contribution rate below five percent of CCC resources expended will not be approved. CCC has determined that rates of contribution less than 5 percent are insufficient to effectively administer a program.

(2) Notwithstanding the foregoing, CCC may demand repayment in U.S. dollars of the amounts of CCC resources provided to the participant necessary to raise the percentage rate of contribution by the participant to the level specified in the activity plan approval letter, or take such other action in accordance with the agreement, including termination of the agreement, as appropriate.

(3) Except for State groups, the MPP participant's annual contribution must be sufficient to provide adequate U.S. based administrative support to conduct approved activities.

(4) To be eligible as a participant's contribution, an expense must be directly incurred by the MPP participant in planned support of an approved activity and not be reimbursed by any other entity.

(5) The approval letter will specify whether CCC approval of an activity is contingent upon a prescribed level and source of U.S. industry and foreign third party contribution.

(i) When the MPP participant expects that such prescribed contribution for that activity will fall 20 percent or more below the level specified in the approval letter, it must submit an APAR to obtain CCC approval of the reduced contribution level.

(ii) U.S. industry and foreign third party expenses are eligible as contributions only if such expenses are incurred before the end of the approved activity plan year pursuant to a signed written agreement entered into between the MPP participant and the contributing entity and are not reimbursed by any other entity. Such written agreement must pre-date the date on which the expense was incurred.

(6) Eligible contributions must be documented by evidence of actual expenditures by U.S. MPP participant personnel, industry representatives, consultants, or members of trade teams, incurred in the course of conducting approved MPP activities.

(7) The following are ineligible as contributions:

(i) Expenses for membership in clubs and organizations not specifically approved in the activity plan;

(ii) Value of time and other expenses of those who are the target of the approved promotion activities;

(iii) Any expenditures on brand promotion;

(iv) Any arrangement which has the effect of reducing the purchase price of the commodity or product; and,

(v) Expenses for handling, stocking, or shelving the commodity or product being promoted.

(e) *Special provisions for brand promotions by MPP participants.*—(1) *General.* This subsection applies to activities for the promotion of brand products conducted by U.S. and foreign commercial entities (hereafter "brand participants") through a MPP participant. It does not apply to EIP/MPP agreements.

(2) *Application procedure and content.* (i) These application provisions are in addition to those specified in § 1485.12(b)(2).

(ii) Funds for such activities can be requested by a non-profit organization, State group, cooperative, or State agency as part of their regular process of applying for a MPP agreement. Any commercial entity applying for CCC resources through one of these applicants must submit to the applicant for inclusion in the MPP activity plan the information required by § 1485.12(b)(2).

(iii) Plans and budgets for such activities must be described in the strategic plan section of the application for CCC resources.

(iv) The applicant must describe how the program will be made available to U.S. and/or foreign commercial entities and any differences between how U.S. and foreign commercial entities will operate the program. It must identify the method to be used for announcing the availability of the program, the information solicited from brand participants and the provisions for evaluating brand promotion.

(3) *Distribution of CCC resources for MPP participant brand promotion.* (i) The MPP participant's criteria for distributing CCC resources among brand participants must be objective and reasonably related to its worldwide promotional program goals. The distribution procedures and criteria shall be included in the strategic plan and in the announcement of the program's availability to the U.S. commercial entities.

(ii) The MPP participant may not limit participation to commercial entities which are members of its organization. The program must be made available throughout the participant's industry or, in the case of State groups, throughout the corresponding region. The MPP participant must document the methods by which it publicizes program availability.

(4) *Agreements between MPP participants and brand participants.* Upon CCC approval of the activity, the MPP participant must enter into an agreement with each approved brand participant which:

(i) Identifies the brand promotion time period. All agreements between the MPP and brand participants, and all brand promotion expenditures, must fall within the MPP participant's approved activity plan period. For example, if the MPP participant's plan period is the Federal Fiscal Year, an agreement signed on October 1 could run 12 months through the following September 30, while an agreement signed on January 1 could run for only nine months through the following September 30;

(ii) Makes no reference to extensions or renewals;

(iii) Limits eligible reimbursable expenditures for each approved market to those approved in the activity plan;

(iv) Describes documentation requirements, the percentage of promotion expenses that will be reimbursed, and reimbursement procedures;

(v) Includes a written certification that the brand participant either owns the brand of the product it will promote or has a sole agency agreement with the owner of the brand in each of the markets in which CCC resources will be used; and,

(vi) Includes a requirement that all product labels, promotional material and advertising identify the origin of the agricultural commodity or product as "U.S.", "U.S.A.", the State of origin or other U.S. regional designation approved by CCC.

(5) *Redistribution of brand promotion funds.* The MPP participant's redistribution of previously distributed but unexpended brand promotion funds must be in accord with the foregoing procedure so as to ensure that all U.S. commercial entities have an equal opportunity to participate on the same terms and conditions. Such redistribution requires prior CCC approval.

(6) *MPP brand promotion program operations.* (i) Generally, CCC resources may not be used to reimburse more than 50 percent of a MPP brand participant's eligible direct promotional expenses approved in the activity plan, with reimbursement at lesser percentages determined in the same way as for EIP/MPP participants, as specified in § 1485.13(b)(2) above. For MPP brand participants, exemptions from this 50 percent reimbursement limitation for brand promotion are the same as those specified for EIP/MPP participants in § 1485.13(b)(4) and § 1485.13(b)(5) above.

(ii) Direct promotional expenses which can be reimbursed from CCC resources are limited to:

(A) Production and placement of media and direct mail advertising for retail and trade in print and electronic media, billboards, and posters;

(B) Booth construction, freight, and participation fees for trade-only exhibits and shows;

(C) In-store and food service promotions, product demonstrations to the trade and to consumers, employment of part time contractors to help in implementing specific promotional activities at point of sale (POS) or display sites, production and distribution of promotional POS materials, and expenditures on distribution of promotional samples (excluding expenses to acquire the samples);

(D) Production and distribution of promotional information to the media, trade and consumers; and,

(E) Trade seminars designed to inform industry representatives of specific attributes of U.S. commodities and products. This include rental, translation and duplication of seminar materials. It does not include personal services, consultant fees, and related travel expenses.

(iii) The following expenses will not be reimbursed with CCC resources:

(A) Salaries, living expenses, office expenses, allowances and related expenses;

(B) Travel and per diem;

(C) Expenses of product samples;

(D) Sales expenses, including slotting fees;

(E) Expenses for design and production of packaging and labeling;

(F) Giveaways, awards, prizes;

(G) Redemption value of coupon and price off deals;

(H) Sales and trade related expenses such as meals, receptions, refreshments, entertainment and gifts;

(I) Capital expenditures, such as permanent displays;

(J) Market research;

(K) Product development expenses; and

(L) Consultant fees.

(7) *Foreign third party expenses.* CCC resources can be used to reimburse brand promotion expenses incurred by a foreign third party provided the expenses are incurred pursuant to a signed agreement between it and the brand participant and are not reimbursed by any other entity. Expenses incurred by the foreign third party must be separately identified in claims submitted by the MPP participant. The MPP participant must assure that such expenses are verifiable and reasonable and, to the extent expenses are reimbursed with MPP resources, the reimbursement must be passed through to the foreign third party.

§ 1485.15 Criteria for allocation of CCC resources.

(a) *General.* (1) Allocations of CCC resources will only be made to applicants whom CCC determines can effectively carry out the purposes of the program and who represent agricultural commodities and products of which the U.S. origin content by weight is at least 50 percent, exclusive of added water.

(2) Priority is given to participants who will promote commodities and products affected by a documented unfair trade practice, as defined in § 1485.11.

(b) *Specific criteria.* CCC takes into account the following in its consideration of MPP and EIP/MPP applications:

(1) The extent to which the prospective participant represents production of the agricultural commodity, with first priority given to applicants with the broadest-based producer membership;

(2) The applicant's ability to provide with its own resources a U.S. based staff capable of conducting overseas promotion projects, its willingness to otherwise contribute resources to the project, and the scope and complexity of proposed activities in relation to the applicant's prior export experience and U.S. based staff resources;

(3) CCC's determination of the adequacy of the applicant's strategic plan in terms of its description of market conditions and identification of constraints, the likelihood of overcoming the constraints through use of CCC resources, and the estimated change in exports and/or market share expected as a result of overcoming the constraints;

(4) For brand promotions, a detailed explanation of the prospects of success of the proposed activities in terms of increasing exports of the U.S. agricultural commodity or product; and,

(5) The adequacy of the applicant's provisions for monitoring and evaluating the activities proposed in the strategic plan.

(c) *CCC notification.* CCC will notify all applicants in writing of the final disposition of their applications and the award of MPP allocations will be announced in a press release.

§ 1485.16 Activity plans.

(a) *General.* (1) A participant must submit an activity plan on an annual basis to CCC containing the information required by these regulations for each foreign market in which activities will be conducted. Activities specified in an activity plan must be designed to move towards the objectives specified in the strategic plan.

(2) The plan must identify the constraints to expanding or maintaining U.S. exports of the relevant agricultural commodities or products to each market addressed by an activity. It must describe how the proposed activities relate to evaluations of prior year programs. The constraint narrative must also include three to five year trade oriented goals, such as market share and export levels, current benchmarks for the activities in each market, and

methodology for measuring progress toward achieving program goals.

(3) The plan must detail proposed activities and expenditures, separately identify expenditures to be reimbursed with CCC resources and, in MPP participant plans, the resources to be contributed by the participant, the U.S. industry, Federal or State entities, and foreign third parties. In the case of an EIP/MPP plan, only eligible reimbursable expenses should be included.

(4) Each activity in the activity plan must have specific goals and benchmarks against which the activity's success will be measured and the methodology for measurement.

(5) Additional requirements related to brand promotion appear in § 1485.13 and § 1485.14.

(6) Additional requirements related to overseas offices are contained in § 1485.20.

(7) Any expense incurred for an activity carried out prior to CCC's approval of the corresponding activity plan may not be reimbursed with CCC resources or claimed as a contribution, except that for the 1991 activity plan year, CCC may reimburse such prior expenses under an EIP/MPP agreement if made after CCC has allocated resources to carry out an EIP/MPP agreement for the specific commodity, or under an MPP agreement if made after CCC has allocated resources to that particular participant.

(8) Any expense other than in accordance with the activity plan may not be reimbursed with CCC resources or claimed as a contribution.

(b) *Contents of activity plan.* An activity plan must set forth the information specified in § 1485.16(a) utilizing numeric or alphabetic codes which are available from the Division Director. CCC will only approve an activity plan which provides such information. Suggested formats for activity plans are available from the Division Director.

(c) *Submission of activity plan.* The Participant shall submit three copies of the activity plan to the appropriate Division Director by the deadline established by CCC and at the same time a copy of the relevant sections to the Attache/Counselor responsible for each country in which an activity is proposed.

(d) *Approval of activity plans.* CCC approval of an activity plan will be in writing and will specify which of the proposed activities have been approved, which have been disapproved, and any limitations or conditions that apply to the operation of the proposed program.

(e) *Changes in activity plans.* (1) After CCC has approved an activity plan, the participant can request changes in the plan by submitting an activity plan amendment request (APAR). An APAR must be approved by CCC before any expenses authorized by the APAR are incurred.

(2) The APAR must be submitted to the appropriate Division Director with a copy to the Attache/Counselor responsible for each country in which a proposed activity or budget change will occur. An APAR must include the information specified in § 1485.16(a) utilizing numeric or alphabetic codes which are available from the Division Director. A suggested format for an APAR is available from the Division Director.

§ 1485.17 Reimbursement with CCC resources.

(a) *General.* To be eligible for reimbursement from CCC resources, an expense must have been incurred in compliance with the provisions of these regulations and with the laws and regulations of the country in which the activity was carried out. The participant is responsible for examining each reimbursement claim sent to CCC and instituting controls and safeguards to ensure that such claims are for proper and reasonable charges against CCC resources as authorized in the program agreement, activity plan and plan amendments, and that transactions comply with regulations.

(b) *Authorized expenses.* CCC resources may only be used to reimburse expenses of participants for activities detailed and budgeted for in the participant's approved activity plan and any associated APAR's.

(c) *Special reimbursement provisions on demonstrations or training activities of MPP participants.* (1) This subsection applies to demonstration and training activities involving the transfer of non-expendable property. (See § 1485.19(d)). Such activities include, but are not limited to, supplying or constructing equipment, processing facilities, training centers, or research laboratories and/or providing technical expertise connected therewith.

(2) CCC may approve no more than one such demonstration or training activity under each MPP agreement for each market when CCC determines the activity to be the most cost effective and practicable method of overcoming a market constraint caused by a lack of technical knowledge or expertise in the processing or utilization of the commodity being promoted. Such an activity is solely for the purpose of transferring technical knowledge and expertise.

(3) The activity must be undertaken pursuant to a written agreement between the MPP participant and a foreign third party that provides for the transfer of title to any non-expendable property involved in the activity to the foreign third party and permits the MPP participant to use the non-expendable property for a period specified in the agreement for the purpose of removing the constraint.

(4) CCC will not reimburse expenditures for land and livestock.

(d) *Unauthorized expenses.* The following are not reimbursable with CCC resources:

(1) Payment for salaries of personnel and for goods and services provided directly by third party participants;

(2) The expense of membership in clubs and professional organizations;

(3) Personal insurance for privately owned articles;

(4) Payment of indemnity and fidelity bond expenses;

(5) Contest prizes, awards, trophies;

(6) Credit card fees;

(7) Fees for participating in U.S. Government sponsored activities, other than trade fairs and exhibits;

(8) Business cards;

(9) Purchasing and mailing of seasonal and holiday greeting cards;

(10) Office parking fees;

(11) Token gift items;

(12) Refreshments and related equipment for office staff;

(13) Subscriptions to and advertisements in participant published periodicals, or subscriptions to other publications unless used by overseas staff in support of authorized MPP activities or as a source of current information on market and economic conditions;

(14) Labeling, packaging and associated design expenses;

(15) Promoted commodities or product samples used in demonstrations, feeding trials, and other MPP generic activities, other than transportation or preparation expenses for a commodity or product distributed gratis to a foreign target audience;

(16) Slotting fees;

(17) New product development;

(18) Except for State groups, any domestic administrative support expenses;

(19) Travel in the continental U.S., Hawaii and Alaska, unless in transit to or from a foreign destination or otherwise specifically provided for in the activity plan;

(20) Payment of employee's or contractor's share of personal taxes,

except as legally required under local jurisdiction;

(21) Except for State groups, expenses associated with functions in the United States, such as trade shows, seminars, entertainment, and sales and trade related expenses;

(22) Any arrangement which has the effect of reducing the purchase price of the commodity or product; and,

(23) See § 1485.14(e)(6)(iii) for a list of additional items that are not reimbursable under MPP agreements involving brand promotions.

(e) *Reimbursement claims.* Any reimbursement claim submitted, other than a final claim submitted for an activity year, must total no less than $10,000. The participant's U.S. Office shall request reimbursement by submitting a claim to the Fiscal Control Staff, FAS, USDA, utilizing numeric or alphabetic codes which are available from the Division Director. A suggested format for reimbursement claims is available from the Division Director.

(f) *Compliance report findings.* If any amounts shown on the claim are reimbursements to CCC pursuant to Compliance Report findings, these should be noted in the claim and the Report which made the findings must be cited.

(g) *Accuracy.* The participant is liable for the accuracy and propriety of all claims and must reimburse CCC in U.S. dollars for any amount subsequently disallowed.

(h) *Charges to MPP accounts.* Expenses are charged to the oldest unexpended MPP account in the program agreement without regard to the activity plan in which the expenses were authorized.

(i) *Reimbursement value.* When reimbursement is made with CCC commodity certificates rather than in U.S. dollars, the U.S. dollar value shown on the face of the CCC commodity certificate determines the reimbursement value to the participant.

(j) *CCC reports on account balances.* CCC periodically distributes reports to the participant detailing the MPP account balance for the corresponding agreement and activity plan. Participants must report to the Division Director any discrepancies between such reported balances and those contained in their records.

(k) *Limitations and procedural requirements of reimbursement claims.* (1) Reimbursement claims are limited to incurred expenses for approved activities and may not be made for refundable deposits or advances made to contractors or travelers until the service or materials have been received or the travel completed and the advance settled.

(2) Claims must not include previously billed amounts.

(3) Claims must be categorized and coded with supporting documentation.

(4) When requested, the participant must forward to CCC originals or copies of documents supporting reimbursement claims.

(5) If an overpayment is made by CCC for whatever reason, the amount must be returned by the participant to CCC.

(l) *Timing of submission of reimbursement claims.* (1) Participants must submit claims for reimbursement to CCC within 180 days after the end of the activity plan year.

(2) Activity expenses incurred prior to CCC's approval of the activity will not be eligible for reimbursement or consideration as an eligible contribution.

(3) Activity expenses incurred up to 30 days beyond the end of an activity plan year may be charged back to the budget for that activity plan year.

(4) Agreements supporting reimbursable expenses must be in writing and must detail the responsibilities and obligations of each signatory.

(m) *Responsibility of participants.* The participant is solely responsible for the legal sufficiency of its contracts and other obligations and assumes financial liability for any expenses, claims, suits, challenges, or other disputes resulting therefrom. Participant contracts and other obligations shall make no reference to CCC or to any other agency of the U.S. Government, its personnel or programs.

§ 1485.18 Advance Requests.

(a) *General.* Advances are not authorized under EIP/MPP agreements or MPP brand promotions.

(b) *Advance procedures.* (1) The MPP participant can request in writing to CCC an advance payment to be issued once or in increments throughout the activity plan year. Such advance shall not exceed 40 percent of the annual budget (excluding branded promotion) approved by CCC in the activity plan. CCC may require the participant to submit security in a form and amount acceptable to CCC to protect CCC's financial interests. The expense of such security is not reimbursable by CCC.

(2) In reimbursing MPP expenses, CCC first offsets claims for an activity plan year against MPP participant advances outstanding on the date of receipt of the claim in that year. CCC will reimburse beyond this amount only at such time that the advance is fully expended.

(3) If the MPP participant does not fully expend the advance on approved activities within 90 days of its issuance, the participant must return to CCC the unexpended amount plus a pro rata share of proceeds generated by the advance, such as premiums generated by certificate sales, and interest earned on certificate proceeds and CCC funds.

(c) *Prior year advances.* No advance is made in an activity plan year so long as an advance is outstanding for the prior plan year. Prior year advances are accounted for by:

(1) Submitting claims of equivalent dollar value for activities authorized in the activity plan for the year in which the advance was made; or,

(2) Refunding to CCC the balance of the advance plus a pro-rata share of all proceeds generated by the advance.

(d) *Refunds due to CCC.* Refund the amounts due to CCC by mailing a check payable to the Commodity Credit Corporation to: Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1000.

§ 1485.19 Overseas Administrative Expenses and Related Matters.

(a) *General.* This section sets forth the procedures, documentation requirements, and approval criteria for reimbursable overseas administrative expenses. Such expenses are those associated with a MPP participant's overseas office and include: Salaries, rent, utilities, office supplies, clerical support, travel deemed by CCC to be for administrative support purposes, and legal and accounting services. Such expenses are not reimbursable under an EIP/MPP agreement.

(b) *MPP participant overseas administrative expenses.* Any overseas office established by a MPP participant must be provided and budgeted for in the activity plan. The extent to which CCC resources may be used to reimburse certain personnel expenses of operating such an office is specified in § 1485.20. An activity plan proposing to establish or maintain an overseas office must contain the following information:

(1) A statement indicating why and how on-site representation will more effectively and economically accomplish program objectives than would travel from the United States or from another foreign office of the MPP participant;

(2) An itemized estimate of expenditures for establishing and maintaining the office, and, for each item, the share to be reimbursed with

CCC resources and the share to be contributed by the participant; and,

(3) Personnel requirements, including the job title, function, position description, and grade range for each staff position.

(c) *Real property leases.* (1) All leases supporting claims for reimbursement must be in writing.

(2) CCC will reimburse only the annual rent and operating expenses of the office as budgeted in the current approved activity plan. The MPP participant is liable for any unapproved forward year expense obligations.

(d) *Nonexpendable project property.* (1) Nonexpendable property includes: Office or demonstration furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, decorations, computer software and articles of a similar nature that have an expected service life of at least one year and retain their identity when put into use. If approved in the activity plan, CCC resources may be used to purchase or lease nonexpendable property needed to conduct MPP activities or to repair such property. Unless otherwise approved by CCC, a request for CCC resources to purchase or repair such property will be budgeted as an administrative activity in the activity plan. Special limitations apply for certain demonstration or training equipment, as specified in § 1485.17(c).

(2) Title to nonexpendable property purchased with CCC resources passes to the MPP participant at the time of purchase.

(3) Upon termination of MPP activities, or closing of an office having jurisdiction over the activity in which the property was used, title to the property acquired wholly or partly with CCC resources shall pass to CCC unless otherwise approved by CCC.

(4) Any purchase of nonexpendable property must be for the specific budgeted purpose found in the approved activity plan. Such property with a value of $100 or more must be included in the office's inventory. The inventory must list and number each item purchased with CCC resources and include for each item the following: Date of purchase or acquisition; cost of purchase; replacement value; serial number; make; model; electrical requirements.

(5) The MPP participant is responsible for insuring all nonexpendable property purchased with CCC resources and for safeguarding against its theft, damage and unauthorized use. CCC resources may be used to insure such property.

(6) The MPP participant must promptly report any loss, theft, or damage to nonexpendable property purchased with CCC resources to the insurance company in accord with the corresponding insurance policy.

(7) CCC resources may be used to lease nonexpendable property when such lease is in writing and does not extend beyond the current activity plan year.

(8) CCC resources may not be used to purchase, lease (except for use in authorized travel status), or repair motor vehicles.

(9) Property purchased with CCC resources that is unusable, unserviceable, or no longer needed for project purposes is to be disposed of in one of the following ways, and the MPP participant must document the reasons for the disposal method:

(i) Exchange or sale: The MPP participant must apply any exchange allowance, insurance proceeds or sales proceeds toward the purchase of other property needed in the project or treat it in accordance with the provisions of § 1485.26;

(ii) Transfer of property for program purposes: The MPP participant may transfer the property to other MPP participants and activities, or, with CCC approval, to a foreign third party. Conditions and limitations on the use of property transferred to a foreign third party for program purposes must be included in the document transferring ownership and approved by CCC; or,

(iii) Upon Attache/Counselor approval: Unneeded property may be donated to a local charity, disposed of as unusable, or physically transferred to the Attache/Counselor, along with any documents of title and a complete inventory of the transferred property.

§ 1485.20 Compensation levels for foreign national and U.S. citizen employees and consultants.

(a) *General.* This section prescribes limitations on the use of CCC resources to reimburse expenditures on employees and consultants under a MPP agreement. Such expenses are not reimbursable under an EIP/MPP agreement. A MPP participant may compensate employees and staff in excess of the limits detailed in this section. Such excess amounts are not reimbursable but can be claimed as eligible contributions if they meet the requirements of § 1485.14(d).

(b) *Salary and allowance levels for a U.S. citizen employee in a foreign office.* When approved as an administrative activity in the activity plan, CCC resources may be used to cover basic salary and allowance expenses for a U.S. citizen employee in an approved foreign office. Use of CCC resources for these purposes is limited to no more than 125 percent of the General Schedule Grade 14 (GS–14) Step 5 salary, or what is budgeted in a CCC approved activity plan, whichever is less. Salary and allowance expenses must be separately budgeted in the activity plan and individually documented with receipts. Expenses on educational travel of dependent children, rest and recuperation travel, home leave travel, emergency visitation travel, evacuation payments (safe haven), shipment and storage of household goods and motor vehicles are not considered allowances, and may be separately reimbursed with CCC resources if provided for in an approved activity plan or otherwise approved by CCC. Such expenses will be reimbursed at rates and frequency of those applicable to overseas FAS personnel.

(c) *Salary levels for a foreign national employee in a foreign office.* (1) When approved as an administrative activity, CCC resources may be used to pay the salary expenses and/or hiring of a non-U.S. citizen staff employee. Use of CCC resources for these purposes is limited to no more than the rates prescribed for equivalent positions in the local U.S. Embassy Foreign Service National (FSN) Salary Plan.

(2) Use of CCC resources to reimburse salary expenses of a foreign national employee in a foreign office shall not exceed the maximum prescribed for the top grade and step in the local U.S. Embassy FSN Salary Plan except in the following cases:

(i) A country director for whom CCC determines the top grade and step of the local FSN Salary Plan does not adequately compensate the employee for his/her level of responsibility and expertise. In such cases, the MPP participant can create a "Supergrade I", equivalent to a grade increase over the existing top grade of the FSN Salary Plan. The supergrade and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN Salary Plan with that percentage applied to each of the steps in the top grade; and,

(ii) A regional director with responsibility for activities and/or offices in more than one country and otherwise fitting the above description of a country director. For a regional director, the MPP participant can create a "Supergrade II", calculated relative to a "Supergrade I" in the same way the latter is calculated relative to the highest grade in the FSN Salary Plan.

(d) *Fees paid to consultants.* A consultant, rather than being an employee of the participant organization, is contracted to conduct partially or entirely an activity, or group of activities, specified in the approved activity plan. The consultant's fees are budgeted as part of that activity with the expectation that such fees would be reduced or eliminated were the activity reduced or eliminated. Use of CCC resources to reimburse such fees is limited to not more than the gross daily rate of a GS-15, Step 10 for U.S. Government employees in effect on the date the fee is earned.

(e) *Retroactive pay adjustments for employees.* If CCC resources are available under the MPP agreement, CCC will approve retroactive salary adjustments to conform with a change in FSN Salary Plans, effective as of the date of such change. To request approval for such adjustments, the MPP participant must submit an APAR to the Division Director and appropriate Attache/Counselor as soon as the change takes effect. Lump sum payments for retroactive pay increases are charged to the budget for the activity plan year in which the salary increase occurred.

§ 1485.21 Employment practices for overseas employees.

(a) *General.* This section applies to all employment by MPP participants of personnel whose salaries or fees are paid in any part with CCC resources. Such personnel are not employees of CCC. The MPP participant is solely responsible for ensuring that all employment terms, conditions, and related documents conform to local law and custom, and is fully liable for any expenses, fines, settlements or claims resulting from suits, challenges or disputes emanating from such employment terms, conditions, and related documents.

(b) *Documentation requirements.* The MPP participants must retain for each employee all employment related documents such as the employment application, contracts, position descriptions, leave records and salary changes.

(c) *Staffing patterns, salary levels and compensation plans.* The staffing pattern and related personnel expenses must conform to those specified in the administrative activity for which the expenses are budgeted in the activity plan. An APAR is required to hire or promote an employee for a position other than that described in the staffing pattern of the activity plan.

(d) *Recruitment and employment of personnel.* (1) Conditions of employment shall conform with the laws governing non-government employment in the host country. CCC resources may be used to pay employment agency fees but not travel expenses.

(2) A MPP participant must hire under written contract.

(3) The MPP participant must report any employment related improper or irregular actions having a bearing on the propriety of any claim for CCC resources to the Attache/Counselor and its U.S. Office must report such actions to the Division Director.

(4) After consulting with the local Attache/Counselor, CCC resources can be used to cover expenses for legal advice on labor laws in the host country.

(5) Salaries must be paid in terms of local currency for a foreign national and in terms of U.S. dollars for a U.S. citizen assigned abroad.

(6) The MPP participant is solely liable for any forward year financial obligations, such as severance pay, attributable to employment of foreign nationals.

(e) *Office management.* (1) The MPP participant must comply with local law pertaining to payment of health and accident insurance, and other benefits for foreign national employees required to be paid by employers for non-government employees in comparable positions. Such payments may be reimbursed with CCC resources.

(2) Subject to local law, the MPP participant must conform office hours, holidays, and the work week to those generally observed by U.S. commercial entities in the local business community.

(3) The MPP participant must maintain an auditable system of leave records. Claims for accrued annual leave will be reimbursed at such time the employment is being terminated or when required by local law.

(4) CCC resources may be used to reimburse overtime expenses for foreign national clerical staff if the authorization for overtime is documented and indicates that the workload requires such overtime.

(5) Salary advances shall not be reimbursed with CCC resources.

(f) *Insurance.* CCC resources may be used to reimburse premium expenditures for the following types of insurance:

(1) Insurance on nonexpendable property purchased with CCC resources and owned by the MPP participant; and,

(2) Accident liability insurance for: Premises leased with CCC resources, facilities used jointly with third party participants for MPP activities; employers who have hired employees with CCC resources in countries where they are held liable under local law for the expenses resulting from accidents to such employees; and, travel for non-MPP participant personnel that is provided for in the activity plan and paid for with CCC resources.

§ 1485.22 Travel expenses.

(a) *General.* CCC resources may be used to reimburse overseas travel expenses when approved in a MPP participant activity plan. Such expenses are not reimbursable under an EIP/MPP agreement. To be eligible for reimbursement with CCC resources, travel must conform to U.S. Federal Travel Regulations (41 CFR 301 et seq.) and air travel must conform to the requirements of the "Fly America Act." Reimbursement with CCC resources for air travel is limited to full fare economy and can also cover expenses of obtaining passports, visas, and inoculations.

(b) *Notification of attache/counselor.* Unless otherwise instructed, the MPP participant must notify the Attache/Counselor in the destination countries in writing in advance of any proposed travel. Failure to do so will disqualify reimbursement of the corresponding travel expenses, unless determined by the Assistant Administrator, Commodity and Marketing Programs, FAS, that it was impracticable to provide such notification.

(c) *Living expenses.* Reimbursement for living expenses while in travel status must be computed on the same basis as provided by the U.S. Federal Travel Regulations, as amended, in effect at the time the expenses were incurred.

(d) *Automobile mileage.* Reimbursement for authorized use of a privately owned automobile for project business will be at a fixed rate per mile, as determined by the local U.S. Embassy.

§ 1485.23 Reports.

(a) *General.* Each MPP participant must submit the reports described in this section to the appropriate Division Director. All reports must be in English and include the MPP agreement number, the countries covered, date of the report and period covered, signature of the reporting employee or officer, and a cover letter identifying the report. CCC may require the submission of additional reports.

(b) *End-of-year MPP participant contribution report.* Within 180 days after the end of the activity plan year, the MPP participant must submit to the Division Director two copies of a report which separately identifies by activity in U.S. dollar equivalent the contributions made by the MPP participant, the U.S. industry, and the foreign third party in the just completed activity plan year, utilizing numeric or alphabetic codes available from the Division Director. A suggested format of a contribution report is available from the Division Director.

(c) *Trip reports.* Trip reports are required when CCC resources are used to reimburse travel expenses (other than local travel) or per diem. Within 45 days after completion of the travel, a copy of the trip report must be submitted to the appropriate Division Director and to the Attache/Counselor in each country visited. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations or specific accomplishments.

(d) *Research reports.* Activities designated as research in the activity plan require a written report of findings which conform with the information requirements specified in the activity approved by CCC. Research paid for in any part with CCC resources is the property of the U.S. Government and may be made available to any U.S. entity. A copy of the research reports must be provided to the Division Director and to each Attache/Counselor responsible for the markets covered in the report.

§ 1485.24 Evaluation.

(a) *Policy.* CCC requires evaluation of participant program activities to determine whether such activities should be continued or changed, and for planning future market development activities. The participant has primary responsibility for providing information required for Status Reviews, and for conducting or arranging for Activity Evaluations, as approved in the activity plan and described below.

(b) *Types of evaluation*—(1) *Status review.* A documented periodic review of MPP activities to assist the participant and CCC in determining aspects of program design and administration which require modification to improve cost effectiveness or program impact.

(2) *Activity evaluation by MPP participants.* A review of an activity or group of activities to determine whether the activity or activities are meeting or have met goals specified in the activity plan. The review can occur after the activity (activities) have been completed or at a specific stage in implementing the activity (activities) prior to completion. Expenses of such evaluations are budgeted as an "Evaluation" activity in the activity plan. Should the MPP participant propose that a particular activity not be subject to evaluation, the activity plan must explain why not. CCC activity plan approval is contingent upon MPP participant agreement to the scope and scheduling of evaluations specified in the activity plan approval letter.

(c) *Outside evaluations by MPP participants.*—(1) *General.* If a MPP participant intends to have an outside party conduct any aspect of evaluation, general selection criteria (e.g., background and qualifications of the outside party) and planned expenses must be described in the activity plan narrative of the activity that will be evaluated. CCC reserves the right to have direct input and control over design, scope and methodology of any such evaluation, including direct contact with and provision of guidance to the outside evaluator.

(2) *Contents of outside evaluations by MPP participants.* The evaluation shall contain an executive summary which:

(i) Identifies the party conducting the evaluation and the corresponding activity or activities (including the activity plan and activity code), and describes each activity and provides each activity's timing, target audience, budget, MPP expenditures and contributions; includes a concise statement of the contraint(s) specified in the activity plan which the activity was designed to alleviate, as well as the goals/benchmarks identified in the plan; describes the evaluation methodology; details the findings with respect to the goals and benchmarks of the plan, and the strengths and weaknesses in administration of the activity; identifies any extenuating factors influencing the outcome of the evaluation or the conduct of the activity, including the reasons for and the impact of any reduction in budgeted contribution levels; and, gives recommendations for ongoing programs;

(ii) Contains a cover letter prepared by the MPP participant as an attachment to the executive summary which details the participant's assessment, each of the evaluation's findings and recommendations, its plans for future programs, and planned changes in programs in response to evaluation results.

(d) *In-house participant evaluations.* If CCC's activity plan approval letter calls for an activity evaluation by the participant or its agent, contractor, or other representative, then the participant must submit a report covering the same information required in the Executive Summary of an outside evaluation, with a recommendations section providing the participant's own views about what the evaluation suggests for ongoing or future program planning and administration.

§ 1485.25 Financial management, accounting and records.

(a) *General.* This section covers financial administration of MPP and EIP/MPP activities, including accounting procedures for expenditures and contributions made under program agreements in conformity with approved annual activity plans. Unless otherwise specified, all instructions and procedures in this section are the responsibility of the participant's U.S. Office. Each is responsible for instituting a financial management and accounting system to track CCC resources and/or MPP participant contributions. The system must ensure accurate, current and complete documentation of all transactions for each activity approved in an annual activity plan and its amendments, and ensure that CCC resources are used only for approved purposes.

(b) *Authorized signatures.* The participant's Chief Executive Officer (CEO) of its U.S. Office, or a signatory designated in writing by the CEO, will sign the program agreement on behalf of the participant as well as a signature card designating which participant officials are authorized to sign program agreements, reimbursement claims and advance requests. Two of the signatures on the signature card are required on every advance request or reimbursement claim. The participant is responsible for notifying the Director, Marketing Operations Staff, FAS, USDA, immediately of any changes in signatories and for updating the signature card accordingly.

(c) *MPP and EIP/MPP Program records.* (1) The MPP or EIP/MPP participant must maintain appropriate records and document transactions relating to program activities for five calendar years following the year in which a transaction occurred, as evidenced by the records and documents. All records and accounts of program activities, contributions and expenses shall be available for inspection and/or audit by U.S. Government authorities for such period.

(2) The participant shall require in agreements with third parties information supporting claimed contributions or reimbursements, and provisions which make records and accounts available to the participant, or its representative, for inspection and audit.

(3) The participant must maintain records by activity plan code, country activity number, and cost code approved by CCC in the activity plan to which the expense should be charged, for each expense reimbursed with CCC resources

or claimed as a contribution. Codes can be obtained from the Division Director. The records must include:

(i) Receipts for generic promotion for each expenditure of CCC resources in excess of $25.00, all receipts for branded promotion, and all receipts for sales and trade related expenses (actual vendor invoices or restaurant checks, rather than credit card receipts);

(ii) The exchange rate used to calculate the dollar equivalent of expenses incurred in foreign currency;

(iii) The unexpended balance of each budgeted amount;

(iv) Copies of reimbursement claims to CCC against CCC resources;

(v) An itemized list of claims charged to each of the participant's CCC resources accounts; and,

(vi) Documentation supporting each transaction, including: canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations and travel vouchers. Documentation in support of an EIP/MPP participant claim for reimbursement must identify each eligible direct promotional expense paid by the EIP/MPP participant or foreign third party. Documentation of each financial transaction must contain: The annual activity plan code; the activity code(s); cost code(s); country code(s); English translation of the expense; and cross references for all accounting records and supporting documentation. Codes can be obtained from the Division Director.

(4) Documentation for contributions claimed by MPP participants must include: The dates, purpose and location of the activity to which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. MPP participants must retain and make available for audit the following documentation related to claimed contributions:

(i) The signed agreement between the MPP participant and the individual or group making the contribution; and,

(ii) If available, copies of invoices and receipts for expenses of U.S. industry groups, individuals and foreign third parties which were not reimbursed by the MPP participant; or,

(iii) An itemized statement from the contributor on the expenses it incurred in the joint activity.

(d) *Proceeds.* Participation fees, sales or other proceeds generated by a participant activity wholly or partially reimbursed with CCC resources, must either be used to offset the expense of that activity or returned to CCC. Proceeds may not be transferred to another activity or otherwise absorbed into the participant's budget; however, this prohibition does not apply to premiums, interest or other income generated by liquidation of CCC commodity certificates or administrative fees charged to U.S. commercial entities involved in brand promotion activities when such revenue is used to offset expenses incurred by the participant in administering the brand promotion and are approved by CCC in the activity plan.

(e) *Audit procedures.* The participant must establish internal controls to attend to adverse findings and recommendations emanating from reports by internal, independent, and U.S. Government auditors and examiners. Any periodic audit reports by independent public accountants must be provided upon request to the FAS Compliance Review Staff.

§ 1485.26 Expired or terminated CCC resources.

(a) *General.* Balances of program resources provided for in the MPP or EIP/MPP agreement, but not obligated by the participant before the expiration date of the agreement, shall revert to CCC.

(b) *Procedure.* Within 6 months of a MPP or EIP/MPP agreement expiration, the participant must submit to CCC a final reimbursement claim certifying that no further claims for reimbursement will be made against such agreement. It must include the end-of-year report required in § 1485.23 and any other reports and evaluations required under this regulation.

§ 1485.27 Compliance review.

(a) *Accessibility of records.* All MPP and EIP/MPP participant records pertaining to program agreements, activity plans, reimbursement claims and contributions shall be available upon request to CCC, the FAS Compliance Review Staff, the USDA Office of the Inspector General, and the General Accounting Office, for purposes of making audits, examinations, excerpts and transcripts.

(b) *Reimbursement to CCC pursuant to compliance report findings.* (1) If CCC has reimbursed a participant or offset any advance payments with claims submitted by a participant which are later determined to be unauthorized, the participant must reimburse CCC as follows:

(i) By including in the next reimbursement claim a repayment to CCC in the form of a negative amount against the codes to which the expense was originally charged (codes can be obtained from the Division Director); or,

(ii) By issuing a check for the amount due payable to the Commodity Credit Corporation. Include a report showing reimbursements to CCC as negative amounts against the codes to which the expenses were originally charged. The report is limited to the items covered by the check. Mail the check and expense claims to: Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250-1000;

(2) In either of the preceding forms of reimbursement, include notation that the amount reimbursed is pursuant to a specific CRS report.

§ 1485.28 CCC recourse in the event of noncompliance with regulations.

(a) *General.* CCC may periodically require participants to certify compliance with the requirements of this regulation.

(b) *Procedure.* In the event of a participant's noncompliance with this Subpart, CCC may disallow a claim submitted under an agreement. This pertains to activities approved by CCC after August 16, 1991. CCC may also terminate an agreement, or use any other measure at CCC's disposal.

§ 1485.29 Applicability.

The regulations in this subpart are applicable with respect to activities, including revisions to existing activities, that are approved on or after October 1, 1991.

Signed at Washington, DC., on May 15, 1991.

Duane Acker,

Vice President, Commodity Credit Corporation and Administrator, Foreign Agricultural Services.

[FR Doc. 91-19390 Filed 8-15-91; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 31, 34, 39, 40, and 70

RIN 3150-AC91

Notifications of Incidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise material licensee reporting requirements for byproduct, source, and special nuclear material regarding the incidents related to radiation safety. This action is

necessary to ensure that significant occurrences at material licensee facilities are promptly reported to NRC so that the Commission can evaluate whether the licensee has taken appropriate action to protect the public health and safety and whether prompt NRC action is necessary to address generic safety concerns.

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3795.

SUPPLEMENTARY INFORMATION:

Background

Current regulations require that NRC licensees promptly report certain events involving byproduct, source, or special nuclear material that cause or threaten to cause exposure to specific levels of radiation, the release of radioactive material in specific concentrations, the loss of use of facilities for a specific duration, or damage to property in excess of a specific dollar amount. The events are to be reported either immediately or within 24 hours, depending on the nature and severity of the event as defined in § 20.403. NRC has become concerned that certain provisions of § 20.403 need to be revised because licensees have not been reporting certain significant events. Licensees who failed to report these events were cited for violation of the Commission's regulations.

On May 14, 1990 (55 FR 19890), the NRC published a notice of proposed rulemaking that would delete reporting requirements based on the loss of use of facilities for a specific duration and damage in excess of a specified dollar amount. The deleted requirements would be replaced with reporting requirements that are related more closely to health and safety issues. The proposed requirements covered the following areas: Inability to control licensed material, unplanned contamination events, failure of safety equipment, personal injury events, and fires and explosions. The comment period expired July 30, 1990. Public comments were received on the proposed rule and are available for public inspection and copying for a fee at the Commission's Public Document Room located at 2120 L Street NW (Lower Level), Washington, DC.

Comments on the proposed rule came from a variety of sources. These included universities, hospitals, other government agencies, material licensees, nuclear utilities and individual citizens. Many of the letters received contained similar comments. These comments are grouped together and addressed as a single issue. The NRC has identified and responded to 66 separate issues that include all of the significant points raised by the commenters.

The comments received on the proposed rule have been divided into two groups. Those comments that are not applicable to a specific section of the proposed rule are grouped into a "General Comments" area. Those that are applicable to a certain portion of the rule are grouped into a "Specific Comments" section. The comments and their resolution are discussed below.

Summary and Analysis of Public Comments

A. General Comments

1. Comment: The rule contains reporting requirements for extremely common events. It will lead to confusion and excessive reporting. The rule needs to be altered to exclude insignificant radiation events or significant events with insignificant radiation exposure. Licensees need clear definitions that specify severity levels requiring notification like those currently set out in 10 CFR 20.403 (a)(1), (a)(2), (b)(1), and (b)(2).

Response: The NRC agrees that there is a need to make the criteria in the rule more specific. The final rule has been revised in response to this comment.

2. Comment: Modify the criteria in § 20.403 to add specific notification criteria for fires, explosions, and off site medical treatment provided that these can be clearly separated from the insignificant events. Do not modify parts 30, 40, and 70

Response: In developing the revised criteria for the proposed rule the NRC considered the possibility of revising part 20 rather than establishing criteria in parts 30, 40, and 70. To make these changes, however, would conflict with well established reporting requirements in part 50 and would require the revision of those requirements. Placing the reporting requirements in parts 30, 40, and 70 will provide greater assurance that persons licensed under those parts will be aware of their reporting responsibilities.

3. Comment: The justification for the rule is weak; writing new rules does not mean people will comply with them. The proposed rule provides no accurance of better reporting by licensees.

Response: The NRC agrees that writing new rules in itself provides no assurance that licensees will comply with them. NRC developed the proposed criteria to reduce confusion and disagreements over what types of events should be promptly reported to the NRC. By establishing criteria which more clearly define significant events that need to be reported, licensees are on notice as to those events for which reports are required. One purpose of this rulemaking is to assure that all significant events are reported, and that the NRC and industry have knowledge of and feedback from operating experience.

4. Comment: The rule is prescriptive and eliminates the need for licensee judgment.

Response: The NRC does not feel that the revised rule is overly prescriptive. The rule provides criteria and clarification as to what events need to be reported (as discussed in comment 3 above). It is recognized that the reporting of some events will involve judgment on the part of the licensee. However, the rule must contain sufficiently defined criteria to minimize disagreements and confusion over what events are reportable.

5. Comment: The NRC should establish activity thresholds for each radionuclide that would require NRC notification, such as part 20, appendix C. Also, significant occurrences should be defined in terms of dose equivalents or concentration limits. Severity should be related to the overexposure situations.

Response: In developing the proposed rule the NRC considered the idea of providing specific activity thresholds. However, the NRC felt that these thresholds would be cumbersome and difficult to develop and use. Many licensed operations use mixtures of isotopes in different chemical forms that pose various safety hazards. The NRC believes that the safety hazards posed by contamination incidents are best evaluated on a case-by-case basis, rather than using a generic set of contamination thresholds. However, the NRC agrees that a set of activity thresholds would be appropriate for determining what fires and explosions are reportable. The final rule has been revised to require NRC notification only for fires and explosions involving licensed material in quantities greater than the quantities specified in appendix C of part 20.

6. Comment: The deletion of paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) of 10 CFR 20.403 is appropriate.

Response: Most commenters either agreed or voiced no disagreement that these criteria did not necessarily define events affecting public health and safety and that it was appropriate to delete them.

7. Comment: The NRC should place specific reporting requirements in

individual licenses. Those with emergency plans already have sufficient reporting requirements.

Response: Generic reporting requirements are best implemented by formal rulemaking procedures, including notice and comment. Placing the same reporting requirements in each individual license is not efficient. Moreover, public notice and comment allows for comments that question the need for or efficiency of the reporting requirements, and allows the NRC to consider and respond to such comments. Placing the requirements in each individual license would not allow for such a healthy dialogue.

8. Comment: The proposed amendments should be rewritten and reissued for a new comment period. They are counterproductive to strong licensee programs.

Response: The NRC believes that changes made to the proposed rule in response to the comments are of a nature that they do not necessitate the reissuance of another proposed rule and a new comment period.

9. Comment: The NRC did not consider other alternatives to rulemaking—such as issuing notices to licensees, developing/amending regulatory guides, issuing license conditions, etc.

Response: The NRC did consider alternatives such as those mentioned by the commenters. These were discussed in the draft regulatory analysis prepared for the proposed rulemaking. The NRC believed that certain sub-sections in 10 CFR 20.403 needed to be replaced with better reporting criteria. As indicated in the regulatory analysis, rulemaking action is considered the best procedure for accomplishing this task.

10. Comment: A parallel to power reactor licensees is not proper. Most material licensees have neither the radioactive material inventory nor the stored energy to cause a release like power reactor licensees.

Response: The NRC did not intend to draw a parallel to power reactor licensees when part 50 regulations were cited in the discussion. The NRC was merely pointing out where similar reporting requirements already existed in part 50 in order to illustrate why part 50 was not included in the rulemaking. We agree that material licensees do not have the inventory or the stored energy to cause a release similar to that which could be caused by a nuclear reactor incident. Although the hazard is less from material licensees, a potential hazard nevertheless exists.

11. Comment: In the case of nuclear medicine/nuclear pharmacy, it is difficult to identify any events that would be significant enough to public health and safety to notify the NRC immediately.

Response: The NRC is very interested in incidents at medical facilities because of the proximity of the general public to areas where licensed material is used and stored. Fires, spills, or other incidents involving significant quantities of radiopharmaceuticals (e.g., therapy doses) or involving sealed sources with significant radiation levels pose potential health and safety hazards that warrant prompt notification of the NRC.

12. Comment: The revised rule should be reviewed by the NRC's Advisory Committee on Medical Uses of Isotopes.

Response: The Advisory Committee on Medical Uses of Isotopes (ACMUI) is normally requested to review rules that specifically address medical applications, especially rulemakings involving part 35. An ACMUI review has not been requested for this rule because the notification requirements are generic and go beyond medical uses of isotopes.

13. Comment: Further clarification needs to be provided regarding notification requirements for commercial nuclear power reactors. Companies holding construction permit or operating license should be explicitly exempted for activities occurring within the protected area.

Response: The NRC does not intend for the new criteria to apply to commercial nuclear power plants. In the discussion as well as in the rule (§§ 30.50(c)(3), 40.60(c)(3), and 70.50 (c)(3)), the NRC specifically states that the provisions do not apply to licensees subject to the notification requirements in 10 CFR 50.72. If a nuclear power plant has only a part 50 license, notification is required only under the provisions of 10 CFR 50.72. Although the part 50 license for a nuclear power plant contains provisions for receipt, possession, and use of byproduct, source, and special nuclear material pursuant to 10 CFR parts 30, 40, and 70, the part 50 provisions do not require reports under this rule. If a nuclear power plant has a separate byproduct, source, or special nuclear materials license, notification is required under the new notification requirements in parts 30, 40, or 70; however, these requirements apply only to the activities licensed under the separate materials license and not to any other activities.

14. Comment: The NRC should provide clear guidance on its interpretation of the rule by circulating early event reports with comments on the appropriateness of the report and by providing examples of failures to report.

Response: The NRC agrees and intends to issue information notices and other guidance as appropriate to licensees as implementation issues are identified and experience is gained with the rule.

15. Comment: The NRC should more clearly define the notification requirements concerning the loss of packages of radioactive material.

Response: This rulemaking effort involves the notification requirements in 10 CFR 20.403. The loss of packages of radioactive material is covered by 10 CFR 20.402. Notification requirements for the loss and theft of licensed material have been revised by the major revision to part 20 which was published in the **Federal Register** on May 21, 1991 (56 FR 23360). The major revision specifies what quantities of licensed material require immediate and 30 day notifications when packages are lost.

16. Comment: The burden is estimated to be about 3 days for each notification required for large companies.

Response: The public reporting burden in the proposed rule was estimated at about 4 hours per response. This is an average considering both small and large licensees. We agree that a very large organization with several management levels could take a few days to complete and process such a report.

17. Comment: The subject rule and statements of consideration should make it clear that the rule would apply to uranium enrichment plants whether licensed under parts 50 or 70. Further, 10 CFR 50.72 and 50.73 should not apply to such facilities.

Response: The question of whether or not enrichment plants should fall under parts 50 or 70 is not within the scope of this rule. Currently there are no licensed enrichment plants. The question of which regulations should govern these plants is being dealt with as a separate issue. Under recent legislation (H.R. 4808), commercial uranium enrichment plants would be licensed under parts 40 and 70, rather than part 50.

18. Comment: Immediate and 24 hour notifications should be limited to potentially serious events where it is necessary for NRC to intervene to mitigate the effects.

Response: Under the final rule, the timing of the reporting is related to the severity of the event. The licensee is responsible for the safety of the facility and for assuring proper and prompt action to protect public health and safety. The NRC monitors the licensee's actions, and makes recommendations when appropriate. The NRC also has communication channels to Federal, State and local organizations, and if necessary, can make recommendations regarding appropriate action to protect public health and safety or the environment. In all cases the NRC must be aware of significant events to ensure that appropriate and timely actions are taken.

19. Comment: We do not agree that the categorical exclusions have been met. The proposed regulation as written has a significant environmental impact and cannot be considered to be of a minor nature.

Response: The NRC does not agree that the proposed changes to the notification requirements have any significant environmental impact requiring an environmental review pursuant to part 51. The NRC maintains that while the final rule revises some of the existing requirements, it does not change the NRC's policy that licensees should promptly report significant events. In addition, § 51.22(c)(3) lists amendments to reporting requirements in parts 30, 40, and 70 as categorical exclusions not requiring an environmental review.

20. Comment: The NRC is trying to cover too many different types of licensees with one set of criteria. It would be better to establish separate criteria for each type of licensee (radiography licensees 10 CFR part 34, medical licensees 10 CFR part 35, etc.).

Response: The NRC believes that the proposed notification requirements describe significant events that should be reported by all byproduct, source, and special nuclear material licensees. The NRC does not agree that developing more specialized requirements and amending more parts of the regulations are necessary to meet the objectives of the rulemaking.

21. Comment: The frequent use of the word "any" is not consistent with the stated intent of "significant occurrences."

Response: The text of each notification requirement defines the event to be reported. The word "any" has been deleted from the final rule because it is not necessary to define the event to be reported.

22. Comment: The proposed rule should make it clear that it applies to independent spent fuel storage facilities.

Response: The NRC will consider the application of these reporting requirements to independent spent fuel storage facilities and, if appropriate, will initiate a separate rulemaking effort to amend part 72 in order to allow public comment on that action.

23. Comment: The licensee should not be required to report events that are concluded before any meaningful communication with and participation by the NRC is possible.

Response: The fact that the licensee has completed all necessary actions before the NRC is notified is no reason not to file a report. There may still be some action that the NRC may have to take depending on the nature of the incident. For example, the incident may have generic safety implications not previously recognized and further NRC action, that may range from notifying other licensees to developing a rule, may be appropriate.

24. Comment: The NRC should provide further explanation and possibly examples of what "securing the material and assessing releases" means.

Response: Although the final rule has been reworded, actions necessary to avoid overexposures and releases will usually include securing the material and assessing releases. Securing material includes actions necessary to prevent unauthorized movement of licensed material or unsafe conditions resulting from licensed material. This includes shielding exposed radiation sources, returning licensed material to storage containers, stopping a spill or the spreading of a spill, etc. Assessing releases includes efforts necessary to determine how licensed material has escaped from the licensee's control and where the released material has gone. Assessment actions may include radiation surveys, contamination surveys, and analysis of air, water, and soil samples.

B. Specific Comments

(a) Immediate Notification

1. Comment: The NRC and Agreement States should be notified within one hour for incidents with substantial potential for injury to off site people. The commenter suggests 5 rem for one hour notification.

Response: A requirement for an additional notification is not needed. The Commission's regulations already require emergency response plans (including special notification requirements to states and other authorities) that apply to those licensees who have quantities of licensed material sufficient to result in significant doses to the public in the event of an accident (i.e. §§ 30.32(i), 40.31(j), and 70.22(i)). Those plans include criteria for taking action so that injury or harm to those off site can be minimized.

2. Comment: The time requirement for notification of the NRC may be severe and unrealistic in some cases.

Response: The NRC does not agree that the time requirements are severe and unrealistic. Licensees should be able to perform an initial evaluation of an event and notify the NRC within the 4 or 24 hour time limits. If the event does not clearly fall outside the reporting requirements, the licensee should act conservatively and report the event.

3. Comment: We question the need to immediately report events regardless of quantity and type of licensed material involved.

Response: The rule has been revised so that immediate reporting is not required in all cases. Events involving very small quantities of material, such that exposures in excess of regulatory limits are not possible, would not be reportable.

4. Comment: Do toxic gas releases that include gas releases (such as UF 6, NO_x, HF, etc.) that periodically occur but are contained and controlled by operating procedures need to be reported?

Response: Toxic gas releases would not require an immediate report provided they did not prevent the licensee from taking immediate protective actions necessary to avoid exposures and releases exceeding regulatory limits. However, even if no immediate protective actions were prevented, a report may be required if the toxic gases are also radioactive and the releases exceed the limits specified in § 20.403(a)(2) or § 20.403(b)(2) or in the revised § 20.2202(a)(2) or § 20.2202(b)(2).

(b) Twenty-four Hour Notification

5. Comment: Licensees should not be penalized for failing to report within 24 hours, if a reasonable estimate projects that access would not be lost for more than 24 hours.

Response: If an event does not clearly meet the reporting criteria, but the licensee can not conclusively rule out the need to report the event, the licensee should act conservatively and notify the NRC within 24 hours. If the licensee later determines that an event was not reportable, a 30-day written report would not be required.

6. Comment: The phrase "threatens to prevent" is so vague that many everyday events may qualify for reporting.

Response: The NRC agrees with the commenter that it is difficult to provide a clear, generic definition for the phrase. As a result, the phrase has been deleted from the final rule.

(b)(1) Contamination Events

7. Comment: Minor contamination (such as a contaminated collimator or a spill of short-lived radionuclides) is common in research and medical settings. Access is restricted in the interest of ALARA and efficiency and to

minimize dose. Spills of this nature should not have to be reported. The requirement appears excessive and not related to any potential hazard to the public or the environment.

Response: The NRC agrees that restricting access to allow short-lived isotopes to decay should not be a reportable event. The regulation has been revised to require no report if an area is restricted to allow isotopes with a half-life of less than 24 hours to decay.

8. Comment: How do you determine when an area is "cleaned up?" Is the definition of an "area" limited to any minimum size?

Response: This rule does not attempt to define criteria for releasing areas from radiological controls. No report would be required if the unplanned contamination can be reduced within 24 hours to levels where contamination controls for entry into the area are no more stringent that the controls in effect prior to the contamination accident. The definition of an "area" is not limited to any minimum size. In general, any space normally accessible to workers or the general public qualifies as an area.

9. Comment: What does a "contamination event that restricts access" mean?

Response: Contamination events that restrict access are (1) spills or other types of accidents involving radioactive material that result in elevated levels of radiation from spreadable contamination, and (2) occur in areas that must be restricted by imposing additional controls to prevent individuals from spreading the contamination to themselves or to areas outside the contaminated area. Restricting access also includes additional controls to minimize exposure to radiation levels elevated by the contamination.

10. Comment: The contamination area is unduly restrictive. It makes no distinction about the source of contamination or efforts to remove it. For hospitals, either restrict the definition of a contamination event, exclude contamination from contaminated patients, or exclude temporal extensions of restricted areas beyond what would normally be necessary allowing a more deliberate pace of decontamination.

Response: The reporting requirement has been clarified to indicate that the contamination must be unplanned, however, the NRC does not agree that the term "area" is too restrictive.

11. Comment: The proposed regulation places an unnecessary burden on the licensee with restricted areas. Low action levels for contamination/whole body exposures are low because clean-up efforts can be supplemented with radioactive decay. Hence individual and collective radiation exposures may increase.

Response: The reporting requirements do not relieve licensees from their responsibility to maintain radiation exposures as low as reasonably achievable. The NRC agrees that waiting longer than 24 hours for isotopes to decay is acceptable if a significant reduction in activity will result. The final rule has been revised to not require a report if the licensee is waiting to allow isotopes with half-lives less than 24 hours to decay. However, the benefit of waiting for several days or weeks for isotopes with longer half-lives to decay is questionable. In these cases, a 24-hour report is warranted.

12. Comment: The requirement to notify the NRC within 24 hours needs to be more quantitative. Specific levels of contamination should be stated.

Response: The hazards posed by radioactive contamination vary depending on the activity of the contamination, the chemical and physical form, the normal conditions of the contaminated area, and other factors. Thus, specific contamination levels are only one measure of significance. However, the NRC agrees that if the amount of licensed material involved is not likely to result in exceeding regulatory limits, no report should be required. The final rule has been changed to require a report if the amount of licensed material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material.

13. Comment: Sentence 2 of paragraph 1 in the discussion under Contamination Events states that the "requirement is intended to cover events that cause accidental contamination in excess of the radiological conditions normally present." This standard is markedly more restrictive than the proposed standard and is inappropriate.

Response: The NRC agrees with the comment. The sentence is misleading and has been deleted from the discussion.

14. Comment: The rule should allow for planned activities such as maintenance or decommissioning that would result in restricting access.

Response: The NRC agrees. This criterion has been revised to clarify that it applies to unplanned contamination only.

15. Comment: It is not clear from the rule that restriction of access includes changing protocols such as adopting extra protective clothing. The NRC needs to provide more guidance.

Response: Requiring additional protective clothing or otherwise increasing radiological controls as a result of a contamination accident is significant. The final rule has been clarified to indicate that imposing additional radiological controls is considered to be a form of restricting access.

16. Comment: Licensees should be allowed to postpone cleanup of contaminated areas for longer than 24 hours provided access is restricted, employees do not receive exposures in excess of the regulatory limits, and no releases are being made to unrestricted areas or the environment.

Response: Licensees have been and still are allowed to postpone cleanup of contaminated areas for longer than 24 hours if the contamination is controlled and any delay in removing the contamination is justified. This rule would only require licensees to inform the NRC of the contamination accident.

17. Comment: Change the time for loss of access from more than 24 hours to more than one working day.

Response: The NRC disagrees. A definitive time period is necessary. This time period should be the same for every day of the week regardless of the length of the work week.

(b)(2) Safety Equipment Related Events.

18. Comment: Guidance is needed concerning reports to be made by licensees when a radiographer's pocket dosimeter is discharged beyond its range.

Response: A 24-hour report would not be required by this rule solely because a pocket dosimeter is discharged beyond its range. However, the discharge of a radiographer's pocket dosimeter may be associated with an event that requires a report pursuant to 10 CFR 20.403 (a)(1) or (b)(1) or the revised 10 CFR 20.2202 (a)(1) or (b)(1). A pocket dosimeter does not prevent overexposure to radiation. It only indicates what dose has already been received. In fact, a discharged pocket dosimeter would tend to minimize radiation exposure because a worker normally leaves an area immediately upon discovering that his or her pocket dosimeter is offscale.

19. Comment: The wording in the proposed rule for safety equipment related events is not clear. Use the last paragraph on page 19891 (column 3) of the **Federal Register** Notice (May 14, 1990; 56 FR 19890).

Response: The reporting requirement has been rewritten in a format similar to the discussion in the proposed rule.

20. Comments: Events should not be reported unless they result in exceeding

some existing limits. Either specify some limits or drop the requirement.

Response: The NRC agrees. The reporting requirement has been revised to indicate that, in order for a safety equipment related event to be reported, the equipment must also be necessary to prevent releases in excess of regulatory limits.

21. Comments: Delete the word "needed" at the end of the first sentence of § 30.50(b)(2) and replace it with the phrase "required to be available and operable."

Response: The criteria have been reworded in the final rule.

22. Comment: As currently written, this section (Safety Equipment Related Events) could result in large numbers of reports on the malfunction of such equipment as portable survey instruments, respirators, fire extinguishers, or even flashlights.

Response: The reporting requirement has been reworded to clarify what equipment malfunctions are reportable. Equipment that is covered by the rule must be necessary for one of the safety functions specified. In other words, it must be needed to (1) prevent releases exceeding regulatory limits, (2) prevent exposures to radiation and radioactive materials exceeding regulatory limits, or (3) mitigate the consequences of accidents that could result in major property damage, widespread contamination outside of controlled areas, fatalities, or serious injuries requiring medical treatment.

23. Comment: Determinations by licensees about whether equipment failures are reportable should be limited to realistic scenarios in order to avoid a significant number of unnecessary reports.

Response: The NRC agrees. Licensees should be realistic when they evaluate whether the function, or the availability of the function of safety equipment, was required when it failed.

24. Comment: The third example on page 19892 (May 14, 1990; 55 FR 19890), concerning radiography equipment conflicts with the notification requirements in § 34.30.

Response: The NRC does not agree that there is a conflict with § 34.30. The proposed rule would require a 24-hour telephone notification in addition to the 30-day written report required by § 34.30. The final rule has been clarified to indicate that a written report submitted pursuant to other regulations may be used to satisfy this rule if the report contains all of the required information and appropriate distribution is made.

25. Comment: Strict interpretation of the rule indicates that every stuck shutter requires a 24-hour report. We fail to see the need to report if the exposure limits are not exceeded.

Response: If there are problems with the design or use of a device containing a source that could cause an overexposure and the problems prevent reshielding of exposed radiation sources, the NRC may need to take prompt action to warn other device users and ensure that the manufacturer is taking appropriate corrective action. The NRC must be aware of safety equipment failures in order to ensure that preventative measures are taken before more serious incidents occur.

26. Comment: Specify what is meant by the word "needed" and what severity of potential event does the equipment protect against?

Response: The final rule states that only equipment required by regulation or licensed condition is covered by the requirement. Safety equipment is needed when a radiation hazard is present and an incident requiring the use of the safety equipment is possible. A 24-hour report is only required by the rule if the safety equipment malfunctions when a radiation hazard exists. The final rule has been reworded to clarify the types of event that safety equipment must protect against.

27. Comment: What is meant by "uncontrolled releases of radioactive material?"

Response: The NRC's intent with the use of the term "uncontrolled releases of radioactive material" was to refer to unplanned releases exceeding regulatory limits. This has been clarified in the final rule.

28. Comment: What is meant by the words "prevent overexposures to radiation, and to mitigate the consequences of an accident?"

Response: To prevent overexposures means to prevent exposures exceeding regulatory limits for workers and the public. The rule has been revised to clarify this point. To mitigate the consequences of an accident means to minimize serious injuries and severe damage after an accident occurs.

29. Comment: The use of the word "automatically" is confusing and should be deleted. Change the last sentence to read "if redundant equipment which performs the required function is operative."

Response: The NRC agrees that the word "automatically" is confusing. The term "redundant" is used to describe independent trains of equipment which perform the same function with the same level of effectiveness and reliability. A manually operated backup to an automatically initiated safety system would not be considered redundant.

30. Comment: Equipment failures reported under § 34.30 should be exempt from this requirement because most incidents regarding radiography equipment failure are detected and resolved by the licensee usually within 24 hours.

Response: The NRC disagrees. The NRC must determine if there are generic design defects that require prompt warnings and corrective actions by the equipment manufacturer.

(b)(3) Personal Injury Events

31. Comment: The degree of personal injury has no bearing on the potential of the radiation hazard and may result in reporting many incidents of no significance to the NRC. A laceration to a lab worker's hand may require sutures where the radiation component may be insignificant. The proposed rule would require the reporting of an event even if the medical treatment was not related to the contamination issue.

Response: The NRC is concerned about the spread of contamination at the medical facility and the possible exposure of the general public to radiation and radioactive contamination. In addition, there is always the possibility that radiation may complicate the treatment of an injury.

32. Comment: Notification should only be required if contamination of the individual or treating medical facility exceeds NRC regulatory limits, license limits, or NRC unrestricted release limits. What is a radioactively contaminated individual?

Response: A radioactively contaminated individual is a person who has removable surface contamination on their clothing or on accessible portions of their body that can be detected by standard methods and can be spread to other individuals. No threshold or contamination level related to regulatory limits has been provided because NRC is concerned about any contamination that is introduced into an emergency room or any other medical facility by an injured person.

33. Comment: Change the word "rendered" in the last sentence to the word "required."

Response: Although the statement has been deleted from the rule, NRC is concerned about what was actually done to the contaminated individual. The fact that the treatment may not have been required does not eliminate the radiation hazard.

34. Comment: The proposed rule required no report for the treatment of a

superficial injury at a licensee-maintained medical facility but required a report for treatment of the same injury elsewhere. Why?

Response: Although many licensee facilities have provisions for controlling the spread of contamination, the potential for spreading contamination is sufficient to cause the NRC to reconsider its position and to decide not to exclude licensee-maintained medical facilities treating superficial wounds from this reporting requirement. An individual with a superficial injury could still spread significant amounts of contamination around the medical facility. In addition, very few reports are expected even if superficial injuries are included. The rule has been appropriately revised.

35. Comment: We have incorporated and maintained appropriate emergency plans, personnel training, and decontamination facilities at a local hospital to specifically cope with medical treatment. Would this be considered a licensee maintained facility?

Response: The NRC has decided to require reports of any injured person introducing spreadable contamination into a medical facility regardless of who maintains the facility. The NRC must be aware of these incidents in order to ensure that appropriate radiological controls are used and to ensure that any radiological consequences caused by the contamination are properly addressed. Since the exception for a licensee maintained facility has been removed from the rule, the above question, regarding interpretation of the rule, is moot.

(b)(4) Fires and Explosions

36. Comment: The most common type of explosions in medical biomedical research, and radiopharmaceutical operations involve screwcap vials or stoppered test tubes containing tissue samples with only traces of radionuclides. Do these types of explosions have to be reported?

Response: When the proposed rule was drafted, NRC did not intend to include explosions of small vials and stoppered test tubes. NRC agrees that fires and explosions involving trace quantities of licensed material should not be reportable. The notification requirement has been revised to only require a report if an explosion or fire involves licensed material in quantities greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20.

37. Comment: In the case of fires, the hazard of the fire may greatly outweigh the hazards of the release. There should be quantitative threshold limits for licensees.

Response: The NRC agrees that the fire usually poses the greatest hazard. However, if a significant amount of licensed material is involved, the NRC needs to ensure that appropriate controls are used during firefighting and cleanup operations. The notification requirement has been revised to establish a reporting threshold of five times the lowest annual limit on intake because the NRC believes it is unlikely that an individual would inhale or ingest more than 20 percent of the material dispersed.

38. Comment: A report should not be required if there is only superficial damage to licensed materials.

Response: The NRC agrees and the reporting requirement has been revised to require no report if the damage to the licensed material or its container does not affect the integrity of the licensed material or its container.

39. Comment: Retain a significant dollar figure in the range of $10,000 for property damage.

Response: The NRC disagrees. A dollar figure for property damage, regardless of amount, is not necessarily indicative of the hazard of the public health and safety. Therefore, the dollar figure has been removed from the regulations.

(c) Written Reports

40. Comment: Licensee duplication of written reports prepared by NRC inspectors does not appear to be justified.

Response: The NRC believes that separate reports serve a useful function. The licensee is directly responsible for the safety operations of the facility and is most knowledgeable about the event, its causes, consequences and appropriate corrective actions. The licensee reports contain useful information on the event and its implications. NRC inspections focus on selected events, and on the status and completeness of corrective action. Thus, NRC reports generally have a different objective than licensee event reports.

41. Comment: Personnel radiation exposure data may at times be difficult to obtain.

Response: The NRC recognizes that there may be times when it is difficult to obtain radiation exposure data. Only data that is available to the licensee is required to be reported.

(d) Criticality Safety in § 70.50(a)(2)

42. Comment: The following nuclear criticality safety events should be included in the rule as reportable events: (1) Unintended accumulation of special nuclear material in an unfavorable geometry, and (2) failure of a special nuclear material concentration monitoring instrument or a failure of a moisture detection instrument.

Response: The NRC agrees that some criticality safety events can be significant. In light of recent events at some facilities and NRC experience, the NRC believes that there may be sufficient justification to warrant incorporating into the regulations reporting requirements for certain types of events related to the criticality of fissile material. The NRC intends to study this issue further and will consider the future promulgation of additional requirements related to criticality safety. No additional requirements were added for monitoring equipment because the rule already requires reports of equipment failures under § 70.50(b)(2).

Discussion

The NRC is amending the reporting requirements in § 20.403 and in the new § 20.2202 which was published in the **Federal Register** on May 21, 1991 (56 FR 23360). The amendments will ensure that events having significant implications for public health and safety are reported. The rule is a matter of compatibility for Agreement States. The Agreement States participated in the development of this rule and their comments were incorporated as appropriate.

Paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) of § 20.403 and § 20.2202 dealing with loss of operation and cost of damage are being deleted because the NRC believes these criteria do not adequately define events with significant implications for public health and safety. For example, the periodic loss of operation of a facility may not be related to any potential hazard to the public or the environment. The same is true for the cost of repairing damage, which may be high for reasons unrelated to any potential hazard from licensed material. New criteria for the reporting of significant events at material licensee facilities are added in parts 30, 40, and 70. The NRC believes the new criteria will more accurately define potentially significant events affecting the health and safety of the public and the environment that must be reported to the NRC. The final rule also contains administrative changes to requirements for general licenses (10 CFR 31.2). These changes specify that general licensees who were previously required to report incidents pursuant to the deleted requirements, must continue to report incidents pursuant to th new reporting requirements.

Revisions to part 50 are not needed because similar reporting requirements are already addressed in § 50.72. Part 50 licensees subject to the requirements in § 50.72 are specifically exempted from this rule to avoid conflicting regulations. However, certain part 50 licensees (e.g., research and test reactors) are not subject to the reporting requirements in § 50.72 and if they possess material licensed under parts 30, 40, or 70, they will be subject to the new reporting requirements.

The intent of these amendments is to require prompt reports (either immediately or within 24 hours) to the NRC of safety related events that may require prompt action to protect the health and safety of the public and the environment. The NRC will evaluate the hazard and the corrective actions taken by the licensee and may dispatch NRC staff to the site of the event, activate the NRC incident response center, or issue warnings of generic hazards to other licensees. The final amendments for parts 30, 40, and 70 are almost identical. Therefore, the discussion that follows is organized by the type of requirement rather than by the sections in the regulations where the requirement is found.

Immediate Notification

A period of 4 hours will be the maximum time allowed for "immediate notification" by material licensees. It is intended that licensees will notify the NRC of incidents as soon as possible, but in no case later than 4 hours after discovery of a reportable incident. Four hours was used because many smaller material licensees do not have the capability to quickly assess and respond to events that reactor licensees possess and because the degree of hazard posed by nonreactor events is typically much smaller than the hazard posed by reactor events.

Control of Licensed Material

The final rule requires licensees to notify the NRC as soon as possible but not later than 4 hours after the discovery of any event involving licensed material that prevents immediate protective actions necessary to avoid either exposures to or releases of radioactive materials that could exceed regulatory limits. The requirement in the proposed rule was changed to define immediate actions in terms of exposures and releases rather than actions necessary to maintain and verify control of licensed material. This was done to clarify what types of actions warrant an immediate report to the NRC.

The NRC expects licensees to report as soon as possible any event where personnel normally able to take an immediate protective action are somehow prevented from taking the action. An immediate protective action is an initial action taken after a hazardous situation is identified to minimize exposures to radiation or radioactive materials, or to minimize releases of radioactive materials. Immediate actions would normally be taken within 15 minutes of identifying the hazard. The NRC does not expect immediate reports of normal delays associated with sounding alarms and responding to the site of the emergency. However, if alarms cannot be sounded or personnel cannot respond, an immediate report (within 4 hours) would be required. A normal delay in responding to an event such as the time to drive to the site or the time to call the fire department would not be reportable. However, once the responders are available and able to do the job, any additional delay would be reportable.

Examples of cases where an immediate report would be required include: A toxic gas leak near a radiography operation that prevents the radiographer from immediately reshielding the source to reduce a high radiation field around the leak; a fire that prevents workers from immediately securing a ventilation system to stop a release of airborne radioactive material exceeding regulatory limits; and a collapsed ceiling from an explosion that prevents workers from immediately closing a valve to stop a release of radioactive material exceeding regulatory limits.

Sections 20.403 and 20.2202 of 10 CFR part 20, still require reports of exposures and releases exceeding specified limits. This new requirement addresses emergency situations where immediate actions normally possible to control radiation or radioactive material are prevented even if the limits in part 20 are not exceeded. This information is needed to assure the Commission that adequate substitute actions are taken.

Because it is difficult to establish a clear, generic definition of a "threat," the final rule has been revised to delete the requirement to report events that threaten to prevent immediate protective actions. The NRC agreed with several commenters that where such reporting is warranted, it would be better to impose specific reporting requirements for threatening events such as the bulging of a filled uranium hexafluoride container through license conditions or other methods where clear definitions of specific threats can be provided.

Contamination Events

The final rule requires licensees to notify the NRC within 24 hours of discovering any unplanned contamination event that requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or prohibiting entry into the area. If a licensee discovers that an area has unexpectedly been contaminated with licensed material, the Commission expects the licensee to impose appropriate controls to keep exposures and releases as low as reasonably achievable (ALARA) until the area can be decontaminated. If controls beyond those that were required before the contamination event occurred are necessary for more than 24 hours, the Commission expects the licensee to report the event.

In response to numerous comments that a 24-hour report is not necessary for small quantities of material or material with a short half-life, the final rule has been revised/modified to exempt certain contamination events from the new reporting requirement. A report is only required if the access to the contaminated area is restricted for more than 24 hours, and the quantity of material involved is greater than five times the lowest annual limit on intake in appendix B of §§ 20.1001–20.2401 of the revised part 20 issued May 21, 1991 (56 FR 23360) for the material, and the reason for the restriction is other than to allow isotopes with a half-life less than 24 hours to decay. The activity threshold of five times the annual limit on intake was chosen because the NRC believes it is unlikely that any individual exposed to contamination would inhale or ingest more the 20 percent of the material dispersed. The half-life threshold of 24 hours was chosen because a significant amount of decay would occur each day and it is unlikely that the area would need to be restricted for more than 1 week.

Reports of unplanned contamination events that exceed the activity, half-life and access restriction thresholds are necessary to assure the Commission that contaminated areas are being decontaminated in a safe and timely manner. In addition, prompt action may be necessary to correct conditions that may lead to additional contamination problems. Examples of reportable events include: A spill of licensed material in the form of a fine powder that requires workers to use additional respiratory protection for more than 24 hours; a leaking shipping container that requires a normally unrestricted shipping facility to be locked up for more than 24 hours; and contamination from a leaking sealed source that requires workers in the area to wear additional protective clothing for more than 24 hours. However, if a spill involved a short-lived isotope such as technetium-99m (6 hour half-life) and entry into the area was prohibited for two days to allow the material to decay, no report would be required. In addition, if the leaking source discussed above contained only 100 microcuries of Y-class cobalt-60 (appendix B of §§ 20.1001–20.2401 of the revised part 20 issued May 21, 1991 (56 FR 23360)), no report would be required because five times the lowest annual limit on intake of Y-class cobalt-60 is 150 microcuries. If the licensee knows that the chemical form of cobalt-60 meets the definition of W-class material, then the higher annual limit on intake for W-class cobalt-60 may be used to determine the reporting threshold.

Safety Equipment Failure

The final rule requires licensees to report within 24 hours of discovering any event in which equipment is disabled or fails to function as designed if: (1) The equipment is required by regulation or license condition to prevent releases or exposures exceeding regulatory limits, or to mitigate the consequences of an accident, and (2) the equipment is required to be available and operable when it is disabled or fails, and (3) no redundant equipment is available and operable to perform the required safety function when the failure occurs. This reporting requirement includes equipment failure, equipment damage, and procedural errors which cause equipment to fail or be disabled.

The final requirement has been rewritten and clarified in several ways. Only equipment that is required by regulation or license condition is covered by the rule. Furthermore, the equipment must be required to prevent releases or exposures exceeding regulatory limits. The accident consequences to be mitigated by the equipment include major property damage, widespread contamination of uncontrolled areas, or fatalities or serious injuries requiring medical treatment. The following are examples of reportable events:

1. Failure of an interlock system required by regulation or license condition that allows a door to an area to be opened when high radiation levels exist in the area.

2. Damage to a filtered ventilation system required by regulation or license condition that permits effluent air to bypass filters during operations. This bypass could result in either releases exceeding regulatory limits or exposing personnel to levels of airborne radioactive material exceeding regulatory limits.

3. Failure of equipment or shielding materials required by regulation or license condition to shield radiation sources.

4. Failure of monitoring equipment required by regulation or license condition to verify that safe criticality conditions exist while special nuclear material is being handled.

5. Loss of water pressure which disables a sprinkler system during a period when the availability of the system is required by regulation or license condition.

This information is necessary to assure the Commission that when the function of required safety equipment has been lost, the licensee has taken appropriate action to compensate for the lost safety function or to eliminate the hazard requiring the safety function. This information is also necessary to identify significant safety equipment failures that may require prompt action to prevent similar problems at other licensed facilities.

Personal Injury Events

The final rule requires licensees to report within 24 hours of discovering any event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body. This information is necessary to assure the Commission that appropriate actions have been taken both to control the spread of contamination and to perform any necessary decontamination. Prompt action may also be required to investigate the cause of the injury and to prevent additional contamination problems.

This requirement has been rewritten to clarify that only spreadable contamination is covered by the rule and that planned medical treatments known to cause spreadable contamination are not covered by the rule. The exemption for first aid at a licensee maintained medical facility for a superficial injury was deleted because the NRC agreed with commenters that a significant contamination event could still occur even if the injury was only superficial and the medical facility was licensed to handle radioactive material. The NRC does not expect that deleting this exemption will result in numerous reports of insignificant events, because no report would be required if any spreadable contamination was removed before first aid was rendered.

Fires and Explosions

The final rule requires licensees to report within 24 hours of discovering any unplanned fire or explosion damaging licensed material, or any device, container, or equipment containing licensed material in quantities greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of part 20 for the material. This information is necessary to assure the Commission that appropriate actions have been taken to detect and control any releases that may have occurred. Prompt action may be required to verify survey results and establish radiological controls for recovery efforts. This requirement was revised to specify unplanned fires and explosions so as to clarify that planned applications of licensed material in fires and explosions by the military or other licensees are not covered by this rule. In response to several requests by commenters, an activity threshold of five times the lowest annual intake limit was added to define what quantities of licensed material are considered significant. This threshold is identical to the threshold for reporting contamination events and is chosen for the same reason. The requirement was also modified because the NRC agreed with one commenter that a 24-hour report should not be required if there is no damage that affects the integrity of the licensed material or its container.

In the event of a fire or explosion, an immediate report would be required if licensee personnel or firefighters were prevented by radiation hazards or other conditions from performing immediate protective actions that they would normally be able to perform (see discussion above on Control of Licensed Material). However, if no immediate protective actions were prevented, but the licensed material or its container sustained damage that affected the integrity of the licensed material or its container, a 24-hour report would be required. If within 24 hours of discovering the fire or explosion, the licensee has not verified whether any reportable damage occurred, the licensee must act conservatively and report the event.

Written Report

The requirement for a written report in the final rule is identical to the proposed rule except for a minor clarification that a report prepared pursuant to other regulations may be submitted to fulfill this requirement if the substituted report contains all of the necessary information and the appropriate distribution is made.

Administrative Amendments Concerning Information Collection

References to obsolete NRC Form 2 in §§ 40.8(c)(1), 40.43(a), and 40.44 have been deleted in this final rule and replaced with the references to NRC Form 313.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0009, 3150–0014, 3150–0017, and 3150–0020.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0009, 3150–0014, 3150–0017, and 3150–0020), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission prepared a regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requested public comments on the draft regulatory analysis, but no comments were received. No changes to the draft regulatory analysis were considered necessary. Therefore, the draft regulatory analysis is adopted as the final regulatory analysis without change. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule effects approximately 9,100 licensees monitored by NRC under 10 CFR parts 20, 30, 40, and 70. The licenses are issued to academic institutions, medical institutions, and industrial entities. The final rule is being issued in order to reduce misunderstandings by material licensees and to more clearly define the types of events that must be reported to the NRC. No report would be required of licensees unless there is an incident involving licensed material that meets the requirements specified in the amendments. Since the revised reporting requirements are not expected to generate a significant number of additional reports, the impact on licensees should be minimal.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and therefore a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits on licensees as defined in § 50.109(a)(1).

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials-transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalty, Hazardous materials-transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 20, 30, 31, 34, 39, 40, and 70.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103 (a), (b) and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), and 20.409 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 20.403 [Amended]

2. In § 20.403, the semicolon and the word "or" following paragraph (a)(2) are removed and a period is inserted, and the semicolon and the word "or" following paragraph (b)(2) are removed and a period is inserted, and paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) are removed.

§ 20.2202 [Amended]

3. In § 20.2202, the semicolon and the word "or" following paragraph (a)(2) are removed and a period is inserted, and the semicolon and the word "or" following paragraph (b)(2) are removed and a period is inserted, and paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) are removed.

PART 30—RULE OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

4. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34 (b), (c) and (f), and 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.9, 30.36, 30.50, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 30.8, paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.15, 30.19, 30.20, 30.32, 30.34, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, and 30.56.

* * * * *

6. A new § 30.50 under Records, Inspections, Tests, and Reports is added to read as follows:

§ 30.50 Reporting requirements.

(a) *Immediate report.* Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) *Twenty-four hour report.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the licensed material or its container.

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.[1] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(v) Any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC Regional office listed in appendix D of 10 CFR part 20. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The isotopes, quantities, and chemical and physical form of the licensed material involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(3) The provisions of § 30.50 do not apply to licensees subject to the notification requirements in § 50.72. They do apply to those part 50 licensees possessing material licensed under part 30, who are not subject to the notification requirements in § 50.72.

[1] The commercial telephone number for the NRC Operations Center is (301) 951–0550.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

7. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 is also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

For purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5(c) (1)–(3) and (5)–(9), 31.8(c), 31.10(b), and 31.11 (b), (c), and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 31.5(c) (4), (5), and (8), and 31.11 (b) and (e) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 31.2 [Amended]

8. In § 31.2, paragraph (a) is amended by adding an "s" to the word "provision" and changing "30.51" to read "30.50."

§ 31.8 [Amended]

9. In § 31.8, paragraph (c) is amended by changing "30.51" to read "30.50."

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

10. The authority citation for part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended, (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246, (42 U.S.C. 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 34.20(a)–(e), 34.21 (a) and (b), §§ 34.22, 34.23, 34.24, 34.25 (a), (b), and (d), 34.28, 34.29, 34.31 (a) and (b), 34.32, 34.33 (a), (c), (d), and (f), 34.41, 34.42, 34.43 (a), (b), and (c), and 34.44 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 34.11(d), 34.25 (c) and (d), 34.26, 34.27, 34.28(b), 34.29(c), 34.30, 34.31(c), 34.33 (b) and (e), and 34.43(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 34.30 [Amended]

11. In § 34.30, paragraph (a) is amended by adding "in § 30.50 and" between "specified" and "under."

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

12. The authority citation for part 39 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 39.15, 39.31–39.51, 39.61–39.77 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 39.15, 39.33–39.43, 39.61–39.67, 39.73–39.77 are issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

§ 39.77 [Amended]

13. In § 39.77, paragraph (b) is amended by removing the word "and" between "20.403," and "20.405," and adding "and 30.50" between "20.405" and "of."

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

14. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 963, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 375, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35 (a)–(d), and (f) 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.5, 40.9, 40.25 (c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.60, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 40.8 [Amended]

15. In § 40.8, paragraph (b) is amended by adding "40.43, 40.44, and 40.60," between "40.42," and "40.61," and paragraph (c)(1) is amended by replacing "Form NRC–2" with "NRC Form 313" and replacing "0019" with "0120."

§ 40.26 [Amended]

16. In § 40.26, paragraph (c)(1) is amended by removing "40.2" and adding "40.60" between "40.46" and "40.61."

§ 40.43 [Amended]

17. In § 40.43, paragraph (a) is amended by replacing "Form NRC–2" with "NRC Form 313."

§ 40.44 [Amended]

18. Section 40.44 is amended by replacing "Form NRC–2" with "NRC Form 313."

19. A new § 40.60 under Records, Reports, and Inspections is added to read as follows:

§ 40.60 Reporting requirements.

(a) *Immediate report.* Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) *Twenty-four hour report.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the licensed material or its container.

(c) *Preparation and submission of reports.* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.[1] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(v) Any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC regional office listed in appendix D

[1] The commercial telephone number for the NRC Operations Center is (301) 951–0550.

of 10 CFR part 20. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The isotopes, quantities, and chemical and physical form of the licensed material involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(3) The provisions of § 40.60 do not apply to licensees subject to the notification requirements in § 50.72. They do apply to those part 50 licensees possessing material licensed under part 40 who are not subject to the notification requirements in § 50.72.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

20. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat . 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.50, 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 70.8 [Amended]

21. In § 70.8, paragraph (b) is amended by adding "70.50," between "70.39," and "70.51."

§ 70.19 [Amended]

22. In § 70.19, the introductory text paragraph (c) is amended by adding "70.50," between "§§ 70.32," and "70.51."

23. A new § 70.50 under Special Nuclear Material Control, Records, Reports and Inspections is added to read as follows:

§ 70.50 Reporting requirements.

(a) *Immediate report.* Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) *Twenty-four hour report.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or licensee condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the licensed material or its container.

(c) *Preparation and submission of reports.* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.[1] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(v) Any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section shall prepare written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC regional office listed in appendix D of 10 CFR part 20. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The isotopes, quantities and chemical and physical form of the licensed material involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

[1] The commercial telephone number for the NRC Operations Center is (301) 951–0550.

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(3) The provisions of § 70.50 do not apply to licensees subject to the notification requirements in § 50.72. They do apply to those part 50 licensees possessing material licensed under part 70 who are not subject to the notification requirements in § 50.72.

Dated at Rockville, MD, this 5th day of August 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-19588 Filed 8-15-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 39

[Docket No. 91-NM-68-AD; Amdt. 39-8001; AD 91-17-03]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which requires a one-time high frequency eddy current inspection to detect cracks in the actuating ram attachment lug, and replacement of the main landing gear (MLG) drag strut attachment fittings, if necessary. This amendment is prompted by recent reports of broken attachment lugs on the MLG drag strut actuating rams. This condition, if not corrected, could result in collapse of the MLG.

DATES: Effective September 20, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 20, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-27 series airplanes, which requires a one-time high frequency eddy current inspection to detect cracks in the actuating ram attachment lug, and replacement of the main landing gear (MLG) drag strut attachment fittings, if necessary, was published in the **Federal Register** on April 23, 1991 (56 FR 18551).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requested that the FAA clarify its intent regarding the compliance time cited in paragraph A. of the Notice, specifically whether the intention was for operators to comply within 500 landings from the effective date of the AD, or within 500 landings from the airplane's first landing. The final rule has been revised to specify that compliance is required within 500 landings after the effective date of the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-17-03. Fokker: Amendment 39-8001. Docket No. 91-NM-68-AD.

Applicability: Model F-27 series airplanes; serial numbers 10102, 10105 through 10684, 10686, 10687, and 10689 through 10692; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG), accomplish the following:

A. Within 180 days after the effective date of this AD, or prior to the accumulation of 500 landings after the effective date of this AD, whichever occurs first, perform a high frequency eddy current inspection of both sides of the actuating ram attachment lug in accordance with part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/54-47, dated November 30, 1990.

B. If cracks are found, prior to further flight, replace the MLG drag strut attachment fitting in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/54-47, dated November 30, 1990.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.