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56
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on the likely effects of the upcoming change.

DATES: Comments on the likely effects of the increased insurance requirements are due on or before January 8, 1992.

ADDRESSES: Submit written comments to John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Solomon Sugarman, Chief, Branch of Farm Labor Programs, Division of Farm Labor, Child Labor, and Polygraph Standards, Office of Program Operations, Wage and Hour Division, Employment Standards Administration; Telephone (202) 523-7605. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to section 401(b)(3) of MSPA (29 U.S.C. 1841(b)(3)), farm labor contractors, agricultural employers, and agricultural associations who transport migrant and seasonal agricultural workers are required to maintain certain minimum levels of insurance sufficient to satisfy liability for personal injury and damage to property. Section 401(b)(3) of MSPA provides that the required level of insurance shall be at least the amount required for common carriers of passengers under part II of the Interstate Commerce Act (49 U.S.C. 301 *et seq.*), and any successor provision of subtitle IV of title 49, United States Code, and regulations prescribed thereunder. This MSPA statutory directive was implemented in the regulations of the Department of Labor promulgated in 1983 after the enactment of MSPA (29 CFR 500.121(b)). That regulation in part continues to set forth the ICC and Department of Transportation (DOT) insurance requirement in effect at the time that the MSPA regulation was originally promulgated.

However, the insurance requirements under the Interstate Commerce Act were increased through rulemaking by the ICC on January 17, 1984, effective on November 19, 1985. The revised ICC regulation (49 CFR 1043.2(b)(1)(ii)) prescribes minimum insurance requirements for various classes of passenger carriers based on motor vehicle seating capacity:

15 or fewer passengers.....	\$1,500,000
More than 15 passengers.....	5,000,000

The current (revised) ICC regulation sets a combined minimum coverage requirement for personal injury and

property damage, rather than prescribing separate minimum requirements for each of these insurance categories, as was done in the previous DOT regulation incorporated into the MSPA regulation in 1983.

The Department recognizes that the revised ICC insurance minimums apply by operation of law under MSPA and, therefore, must be incorporated into the MSPA regulations. The Department also recognizes that a reasonable transition period is necessary to allow affected members of the public to respond to the change. Therefore, the Department is issuing this notice in advance of revising the regulations to give all affected persons notice that the new requirements will be incorporated in the Department's regulations to be effective February 1, 1992.

Request for Comments on the Effect of the Rule Change on Transportation of Workers

Although the insurance increases are required by law, the Department nevertheless seeks information and comments from the public on how the required increase in liability insurance for the transportation of agricultural workers will affect the transportation and employment of such workers. Therefore, commenters are asked to furnish any data available on the consequences of the liability insurance increase, including the following: The number of workers currently being transported; vehicle liability insurance premium rates before and after the change; the number of farm labor contractors, agricultural employers and agricultural associations that transport workers; the effect on the number of hours and days that workers are employed; and, how the availability of transportation to workers will be affected as a result of the insurance increase.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, DC, on this 2nd day of December, 1991.

John R. Fraser,
Acting Administrator, Wage and Hour
Division, Employment Standards
Administration.

Wage and Hour Division,
Employment Standards Administration.
[FR Doc. 91-29309 Filed 12-6-91; 8:45 am]

BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-4038-7]

National Emission Standards for Hazardous Air Pollutants Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: Today EPA proposes to stay the effectiveness of subpart FF of 40 CFR part 61, the national emission standards for hazardous air pollutants (55 FR 8292, March 7, 1990), as applied to all sources originally subject to the rule. These sources are chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical manufacturing plants, coke by-product recovery plants, or petroleum refineries.

The Agency is proposing to stay the effectiveness of subpart FF until EPA takes final action on clarifying amendments to Subpart FF. A proposed settlement agreement with members of the regulated community commits the Agency to take final action on or before December 1, 1992. Clarifying amendments to subpart FF will be proposed in a separate action and will not change the basic control requirements of the current rule or the level of public health protection it provides.

DATES: EPA proposes to stay the effectiveness of Subpart FF of 40 CFR Part 61 for all sources subject to this subpart on or before March 7, 1992, until EPA takes final action on proposed amendments to subpart FF of 40 CFR part 61.

Comments. Comments must be received by EPA on or before January 8, 1992.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 19, 1991, a public hearing will be held on December 24, 1991, beginning at 10 a.m. A request for a hearing may be made by calling Ms. Lina Hanzely at (919) 541-5673.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact Ms. Lina Hanzely at (919) 541-5673 by December 19, 1991.

ADDRESSES: **Comments.** Comments should be submitted (in duplicate if possible) to Air Docket Section (LE-131), Attention, Docket No. A-89-06, U.S.

Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If requested, a public hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Lina Hanzely at (919) 541-5673.

Docket. Docket No. A-89-06, containing supporting information used in developing the proposed action, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric L. Crump, Office of Air Quality Planning and Standards, Chemicals and Petroleum Branch (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5032.

SUPPLEMENTARY INFORMATION:

A. Background and Overview

On March 7, 1990 (55 FR 8292), EPA promulgated under Section 112 of the Clean Air Act ("the Act"), 42 U.S.C. 7412, national emission standards for hazardous air pollutants (NESHAP) controlling emissions of benzene to the ambient air from waste operations (Subpart FF of 40 CFR part 61). The NESHAP for benzene waste operations is applicable to owners or operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. In addition, this subpart applies to owners and operators of facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical plants, coke by-product recovery plants, or petroleum refineries.

The Subpart FF NESHAP for benzene waste operations was promulgated under the authority of section 112 of the Act prior to its amendment by the Clean Air Act Amendments of 1990 ("the 1990 Amendments"). Accordingly, the rule was designed to meet NESHAP risk protection goals for protection of public health. The NESHAP risk protection goals and the policy used to develop the benzene waste operations NESHAP were described in the March 7, 1990 notice of final rulemaking (55 FR 8299).

In the analysis performed to support the development of Subpart FF, EPA determined that the NESHAP risk protection goals could be exceeded if benzene emissions from benzene waste operations were not controlled at a

subset of all facilities subject to the rule. Rather than require all facilities to install controls, EPA structured the applicability criteria of the rule in a way that would identify those facilities where controls were needed.

The approach selected for the final rule was to base applicability of the control requirements on the total annual benzene quantity (TAB) in wastes managed at a facility. All facilities subject to the rule must identify benzene-containing waste streams and determine certain characteristics, such as benzene concentration, flow rate, and percent water, of these streams at their point of generation. Each facility seeking an exemption from control requirements must then calculate its TAB by summing the annual benzene quantity contained in all streams containing greater than 10 percent water. This value is then compared to a facility threshold cutoff in the rule of 10 megagrams per year. Facilities with a TAB of less than 10 megagrams per year are exempt from the control requirements of subpart FF, but must comply with the reporting and recordkeeping requirements of the rule.

It is critical that facilities seeking to be exempt from control requirements calculate TAB consistent with the intent of the rule as structured to meet the NESHAP risk protection goals. For example, waste treatment is not allowed as a means of lowering a facility's TAB for the purpose of determining applicability of the control requirements (although it is an acceptable means of complying with the control requirements). Also, while benzene in wastes containing less than 10 percent water (which are known to have low benzene emission potential) does not count towards a facility's TAB, if these wastes are mixed with water, the benzene in them should be counted in the TAB.

At those facilities above the 10 megagram per year TAB cutoff, all benzene-containing waste streams (including those with less than 10 percent water) must be controlled unless it is demonstrated that exemption criteria in the rule for individual streams are met. The basic control requirement of the rule is that wastes containing 10 parts per million by weight (ppm) of benzene or greater must be treated to remove or destroy the benzene to below 10 ppm or by 99 percent. In addition, both the treatment process and units in which waste streams are managed prior to treatment must be controlled for benzene air emissions.

The effective date for NESHAP promulgated in 40 CFR part 61 is the promulgation date, and unless a waiver is granted by the Administrator, existing

facilities must be in compliance within 90 days of the effective date. In the March 7, 1990 notice of final rulemaking for the benzene waste operations NESHAP, EPA noted that based on comments received on the proposed rule, the complexity of the controls required, and other reasons, the Agency believed that most facilities that must install controls would not be able to comply with the standards within 90 days of the effective date. Therefore, a compliance period of 2 years was granted in the final standards to meet the control requirements of subpart FF. March 7, 1992 would be the last day of this compliance period.

With this notice, EPA is proposing to stay the effectiveness of Subpart FF pursuant to the authority provided by section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). The applicable legal precedents indicate that an agency may stay a previously promulgated rule under the Administrative Procedure Act by rulemaking, so long as the stay is otherwise in accord with applicable law. Subject to a review of comments received on this notice of proposed stay, EPA would issue a notice of final rulemaking to stay Subpart FF before March 7, 1992, the current compliance deadline for the rule. The rationale for proposing a stay of Subpart FF is presented below.

B. Problems Identified With the Current Rule

Relative to other NESHAP, subpart FF is a complex rule that contains complicated provisions for determining the rule's applicability to facilities and individual waste streams within a facility. The rule was proposed and promulgated in about 1 year under a Court-ordered schedule. Due to this short development time, there was little prior awareness of the requirements of the rule by the affected industries, nor was there a complete prior understanding by EPA of implementation problems that would be faced by industry. In addition, there were changes to the rule between proposal and promulgation.

Following promulgation of the rule, there were indications that the rule was poorly understood by affected facilities. Numerous telephone calls and letters to EPA headquarters and regional offices requested explanation of the rule. These inquiries have continued to the present, and suggest widespread confusion on many key aspects of the rule. Due to the number of inquiries received on the rule, EPA included sessions on the NESHAP

for benzene waste operations in a workshop presented between August 1990 and March 1991 on organic air emissions from waste management operations. This workshop was presented in all 10 EPA regions. Each workshop had 100 to 200 attendees from industry, consulting firms, and State and Federal Governments. Questions and comments by workshop attendees indicated widespread misunderstanding of many provisions of the rule. A common point of confusion is how to estimate TAB for a facility, the basic criterion that determines whether the control requirements of the rule apply. Other evidence of this confusion is discussed below.

Review of 90-Day Reports

Each facility subject to the rule was required to submit a report to EPA within 90 days of March 7, 1990, identifying the regulatory status of all benzene-containing waste streams at the facility. This report was due on June 5, 1990. A review of the reports submitted provided additional evidence of confusion about the rule. For example, some facilities incorrectly reported the benzene content of waste streams after treatment, rather than at the point of generation. In some cases, this apparently resulted from lack of clarity in the rule on the distinction between process and waste treatment units. In other cases, facilities assumed from the language of the rule (but contrary to the Agency's intent) that waste treatment could be used to lower a facility's TAB to below 10 megagrams, thus exempting the facility from the rule's control requirements. It also appears that due to lack of understanding of the rule, facilities either excluded some benzene-containing waste streams from the TAB estimate or simply did not report them at all. This has caused many facilities to conclude that they are not subject to the control requirements of subpart FF, when in fact, EPA intended them to be controlled in order to meet the NESHAP risk protection goals.

Litigation

Several lawsuits have been filed against EPA that focus on lack of clarity in the rule. On May 7, 1990, the American Petroleum Institute (API) filed a petition for review of the promulgated standard (Subpart FF of 40 CFR part 61), in the United States Court of Appeals for the District of Columbia Circuit, *American Petroleum Institute v. EPA*, 90-1238 (D.C. Cir.). On the same date, API submitted to the Agency a petition for reconsideration of the rule. The petition for reconsideration requests the

Agency to review several regulatory options which would, in effect, extend the March 7, 1992 deadline. The basis for the requested extension is the expectation that many facilities will not be in compliance by the deadline due to the magnitude and the complexity of the projects that would need to be undertaken to comply with the NESHAP.

On May 30, 1991, API submitted a supplement to the petition for reconsideration which further detailed API's belief that compliance could not be timely. The supplement also discussed the fact that "there were a number of fundamental issues that could not be resolved by simply reading the preamble and regulation." The API asserted in the supplement that the Agency's views on these issues were not communicated to the affected facilities until approximately a year after the promulgation of the rule. The issues include the definition of "point of waste generation" and the exemption of waste streams containing less than 10 percent water. According to API, clarifications by EPA on these issues have caused facilities which originally believed under their interpretation of the rule that they were not subject to control requirements to become aware that they must install controls, with only 1 year remaining until the compliance deadline.

On June 3, 1991, Conoco Inc. and Sun Refining and Marketing Company (Conoco) filed actions in the United States Court of Appeals for the District of Columbia Circuit, *Conoco Inc. and Sun Refining and Marketing Company v. EPA*, 91-1266 (D.C. Cir.), and in the United States District Court for the District of Montana, *Conoco, Inc. and Sun Refining and Marketing Company v. EPA*, No. CV-91-113-BLG-RAW (D. Mont.). These suits are focussed on the calculation of TAB for the purpose of determining the applicability of control requirements at five refineries (four Sun refineries and one Conoco refinery). Sun and Conoco originally interpreted the rule as excluding all benzene in organic wastes from the TAB calculation, including benzene in wastes mixed with wastewater. A letter from EPA's Region VIII office, dated April 3, 1991, providing guidance on this issue stated that facilities must "include the benzene in organic waste in the TAB determination, if the organic waste is mixed with wastewater at some point after its generation." On the basis of this clarification by EPA, Sun and Conoco only recently became aware that controls must be installed at the five refineries.

Survey of Petroleum Refineries

Subsequent to API's filing of a lawsuit and petition to reconsider, API conducted two surveys of its member companies to determine the extent of the petroleum refining industry's inability to comply with subpart FF by March 7, 1992. The first survey was conducted to determine the general status of refineries with respect to subpart FF. Responses were received from 132 of 194 refineries. The results of the survey indicated that 66 of the 132 respondents were subject to the control requirements of subpart FF, and that from 40 to 52 of these refineries, representing roughly 50 percent of U.S. refining capacity, would be unable to comply by March 7, 1992.

A second survey was conducted that asked specific questions about the reasons for projected noncompliance. Responses to the survey were received from 112 of the 194 refineries in the United States. Forty-nine of the 112 refineries responding indicated that their TAB was 10 megagrams or greater and that controls must be installed to meet the requirements of Subpart FF. When asked to identify the critical job elements in their schedule to complete installation of controls to meet the requirements of Subpart FF by the compliance date, more than one-third responded that determining the applicability of the rule to the facility and wastes within the facility was a critical element. This indicates the degree to which uncertainty about applicability of the rule has effectively lengthened the time needed by facilities to comply.

Only nine facilities responding to the API survey expected compliance to be attained by March 7, 1992. (Later discussions with these facilities indicated that only six would be in compliance by March 7, 1992.) Based on evidence that the applicability of Subpart FF is not fully understood, EPA believes that this is a conservative assessment of the extent of projected noncompliance caused by lack of clarity in the rule.

C. Rationale for Proposed Stay

Based on the considerations discussed above, EPA has concluded that the language of the current rule is sufficiently unclear on several basic requirements to warrant further action by the Agency to clarify the rule. Furthermore, it is apparent that due to the lack of clarity in the rule regarding applicability determinations, many facilities have incorrectly assumed that controls are not required, and therefore

will not be in compliance by March 7, 1992. It is the Agency's view that to cite these facilities for noncompliance with subpart FF after March 7, 1992 because the rule is not clear would unfairly penalize them. Therefore, the Agency is proposing to stay the effectiveness of subpart FF while clarifying amendments to the rule are proposed and promulgated. A further description of this approach is presented below.

D. Proposed Approach to Resolving Problems With Current Rule

The Agency is proposing to stay the effectiveness of Subpart FF until EPA takes final action on clarifying amendments to the rule. In a proposed settlement agreement with the regulated community, the Agency has committed to take final action regarding subpart FF on or before December 1, 1992. Coincidental with the issuance of a stay, clarifying amendments to Subpart FF would be proposed. These amendments would be proposed under the authority of section 112 of the Act prior to the 1990 Amendments. Following a comment period and consideration of comments on the proposed amendments to subpart FF, a final amended rule would be promulgated and the stay would be removed. Facilities subject to the rule would then have 90 days in which to comply with all provisions of amended subpart FF. Any facility unable to comply with the amended rule within 90 days of promulgation would be eligible to apply for a waiver of compliance for a maximum period of up to 2 years beyond the promulgation date, following the procedures described in the General Provisions to 40 CFR part 61. However, as a condition for any waivers granted for subpart FF, the Agency would seek to obtain an enforceable commitment from the waiver applicant to obtain mitigating environmental benefits to compensate for benzene emissions resulting from delayed compliance. The Agency is preparing detailed guidance describing the type of mitigating benefits to be sought and how waiver applications for this rule will be evaluated. This guidance will be issued in final form prior to the publication of final clarifying amendments to the rule.

The amendments that EPA intends to propose to the Subpart FF would clarify those provisions of the rule that have been the subject of confusion and misinterpretation. Points that the Agency plans to clarify include (1) the distinction between process and waste management units; (2) where waste stream benzene content should be determined for sour water streams managed in sour water strippers at petroleum refineries; (?) that organic

wastes mixed with water are included in the estimate of TAB; and (4) how the rule applies to wastes generated intermittently by maintenance operations.

The clarification of these points will affect the calculation of TAB for many facilities, and, consequently may determine whether they are subject to the control requirements of the rule. The amendments to the rule will be described in detail and proposed for public comment in a separate notice of proposed rulemaking.

E. Merits of Proposed Approach

For several reasons, EPA believes that issuing a limited stay of subpart FF while clarifications to the rule are proposed and promulgated (under the authority of section 112 prior to the 1990 Act Amendments) is the best approach to resolving the lack of clarity now evident in the current rule. First, this approach will maintain the stringency of the current rule and the level of public health and environmental protection it provides. As indicated by the API survey of petroleum refineries, many facilities are unable to comply by the current compliance date. Due to the long lead times needed to design and install the control systems necessary to comply with the rule, EPA expects that facilities will continue their efforts towards compliance even while the rule is stayed. This means that a stay of the rule while clarifications are made will not necessarily result in a greater amount of benzene emissions and exposure than would occur without a stay. Beyond this, the proposed approach offers the opportunity to obtain mitigating environmental benefits, such as reduced benzene emissions from sources within a facility not subject to subpart FF, as a condition for any waivers of compliance issued under § 61.11 of the General Provisions to 40 CFR part 61. These mitigating benefits will compensate for benzene emissions that occur due to delayed compliance, making it possible to realize the health and environmental protection goals of the rule before complete compliance is achieved.

A second benefit of the proposed approach is that it will lead to a resolution of the litigation filed against the EPA on subpart FF. As described in a separate notice of proposed settlement, API, Conoco, and Sun have agreed to dismiss their lawsuits against EPA if clarifying amendments to the current rule are issued following the approach described above. This would remove the current uncertainty concerning the potential outcome of litigation, thereby hastening the

installation of controls by facilities and enforcement of the rule by EPA.

A third benefit of the proposed approach to clarifying subpart FF is that it will promote the implementation of comprehensive multimedia compliance programs. One factor identified contributing to the inability of petroleum refineries to comply with benzene waste NESHAP by March 7, 1992 is the broad multimedia compliance approach to environmental control being taken by some facilities. Based on the results of the API survey, nearly three-quarters of the refineries subject to control requirements under subpart FF have developed control strategies to achieve integrated compliance with multiple regulatory requirements. For example, nearly two out of every three refineries stated that their compliance approach was also designed to comply with the RCRA toxicity characteristic rule; about one-third said that compliance was integrated with the RCRA primary sludge rule; and one-third indicated participation in a voluntary program for the early reduction of air toxics. In all, 10 different rules or programs were noted by the respondents as part of integrated multimedia compliance approaches. Many of these approaches involve major design and construction projects, such as the installation of new wastewater collection and treatment systems, that will require time beyond March 7, 1992 to complete.

The EPA recognizes that large facilities such as the petroleum refineries and chemical manufacturing plants subject to subpart FF are also subject to a variety of other regulations addressing releases to air, water, and land. The EPA wishes to encourage facilities to develop comprehensive strategies that address the environmental control needs of all production and waste management units at a plant, and that stress the most efficient and environmentally beneficial long-term solutions. By staying subpart FF while clarifying amendments are proposed and promulgated, the Agency would be indirectly allowing additional time for comprehensive multimedia compliance programs to be completed without the penalties that would be associated with missing the current March 7, 1992 compliance deadline for subpart FF.

Finally, it should be emphasized that the proposed stay would not be open-ended. Rather, it is proposed to extend until clarifying amendments to the rule are promulgated. The Agency intends to expedite development and internal review of the regulatory notices that will propose and promulgate clarifying

amendments to the rule, and is committed by the aforementioned settlement to take final action on the proposed amendments on or before December 1, 1992. This approach will limit the potential for loss of benzene emission reduction and risk protection.

F. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this proposed rule for a stay of effectiveness.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that issuing a stay for Subpart FF will result in none of the adverse economic effects set forth in Section I of the Order as grounds for finding a regulation to be a "major rule." This regulation should not be considered major because its annual effect on the economy is not expected to exceed \$100 million, the regulation does not significantly increase process or production costs, and the regulation does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this proposed regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule to stay 40 CFR part 61, subpart FF, if promulgated, will have the effect of easing the burdens associated with immediate compliance with subpart FF, and I, therefore, certify that this rule will not have significant economic impact on a substantial number of small entities.

Dated: December 2, 1991.

F. Henry Habicht II,
Acting Administrator.

[FR Doc. 91-29355 Filed 12-5-91; 10:55 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-18

Acquisition of Real Property

AGENCY: Public Buildings Service,
General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the basic policy under which the General Services Administration (GSA) leases, or delegates to other agencies the authority to lease, space in privately owned buildings. It designates categories of special purpose space which may be acquired by any agency, and specific types of space which may be acquired by specific agencies, for up to 5 years without obtaining authorization from the Administrator of GSA. This proposed rule also defines the limitations on agency use of delegated leasing authority, and the socioeconomic considerations which must be applied by both GSA and delegated agencies when acquiring space by lease.

DATES: Comments must be received on or before: February 7, 1992.

ADDRESSES: Comments should be addressed to: General Services Administration, Office of Real Estate (PQR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Office of Real Estate, Office of Real Property Development, Public Buildings Service, General Services Administration, Washington, DC 20405 (202-501-4266).

Executive Order 12291

GSA has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of \$100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions on this proposed rule on adequate information concerning the need for and consequences of this proposed rule. GSA has also determined that the potential benefits to society from this proposed rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

List of Subjects in 41 CFR Part 101-18

Real property acquisition; Acquisition of real property by purchase or condemnation.

Accordingly, it is proposed to amend 41 CFR part 101-18 as follows:

PART 101-18—ACQUISITION OF REAL PROPERTY

1. The authority citation for 41 CFR Part 101-18 continues to read as follows:

Authority: 63 Stat. 377 (40 U.S.C. 304c, 471, 490, 601-619); 73 Stat. 479; (40 U.S.C. 490 note); (42 U.S.C. 4201-4244); (40 U.S.C. 531-535); E.O. 11512, 35 FR 3979; 84 Stat. 1394.

2. Subpart 101-18.1 is revised to read as follows:

Subpart 101-18.1—Acquisition by Lease

Sec.

- 101-18.100 Basic policy.
- 101-18.101 Acquisition by GSA.
- 101-18.102 Acquisition by other agencies.
- 101-18.103 Agency cooperation.
- 101-18.104 Delegation of leasing authority.
- 101-18.104-1 Limitations on the use of delegated authority.
- 101-18.104-2 List of special purpose space.
- 101-18.104-3 List of special purpose space by agency.
- 101-18.105 Contingent fees and related procedure.
- 101-18.106 Application of socioeconomic considerations.

Subpart 101-18.1—Acquisition by Lease

§ 101-18.100 Basic policy.

(a) GSA will lease space in privately owned buildings and land only when needs cannot be satisfactorily met in Government controlled space; when leasing proves to be more efficient than the construction or alteration of a Federal building; or when construction or alteration is not warranted because requirements in the community are insufficient or indefinite in scope or duration, or completion of a new building within a reasonable time cannot be ensured.

(b) Acquisition of space by lease will be on the basis most favorable to the Government, with due consideration to maintenance and operational efficiency, and only at charges consistent with prevailing scales for comparable facilities in the community.

(c) Acquisition of space by lease will be by negotiation except where the sealed bid procedure is required by 41 U.S.C. 253(a). Except as otherwise provided in 41 U.S.C. 253, full and open competition will be obtained among suitable available locations meeting minimum Government requirements.