LICENSING NEG

SUMMARY: On June 22, 1984, the Occupational Safety and Health Administration (OSHA) published a final standard for ethylene oxide (EtO) (29 CFR 1910.1047, 49 FR 25734). This rule was transmitted to the Office of Management and Budget (OMB) for review and clearance of the information collection requirements contained in the final rule, in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320. The information requirements contained in the EtO final rule, paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j), of § 1910.1047, have now received OMB paperwork clearance, and have been assigned OMB clearance number 1218–0108. The OMB clearance expires January 31, 1986.

The above mentioned paragraphs in the EtO rule are therefore effective as of the date of publication of this notice in the Federal Register. Start-up dates in paragraph (m)(2) are to be calculated from the effective dates of the various provisions of the final rule.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N 3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, elephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: OSHA published a proposed rule on EtO on April 21, 1983 (48 FR 17284) and adopted the final rule on June 22, 1984 (49 FR 25734). The final rule contained the following paragraphs which were determined by OMB to constitute information collection requirements under the Paperwork Reduction Act: (a)(2), Scope and application; (d), Exposure monitoring; (e), Regulated areas; (f)(2), Compliance program; (g)(3), Respirator program; (h), Emergency situations; (i), Medical surveillance; and (j), Communication of EtO hazards to employees. Paragraph (m)(1) of the final rule provided for an effective date for the standard of August 21, 1984. Paragraph (m)(2)(i) established a start-up date for compliance with all paragraphs, except engineering controls, within one-hundred and eighty (180) days after the effective date. The start-up date for implementation of engineering controls was established by paragraph (m)(2)(ii) to be one (1) year from the effective date.

However, as noted in the final rule at 49 FR 25734, the information collection provisions had not been cleared by MB at that time. Accordingly, the effective dates for those requirements in the final EtO standard have remained in abeyance pending OMB paperwork clearance. OMB has now cleared the information collection requirements contained in § 1910.1047 under clearance number 1218–0108, through January 31, 1986. In accordance with that clearance, OSHA is hereby amending paragraph (m)(1) of the final EtO standard to establish a new effective date of March 12, 1985 for paragraphs 1910.1047 (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j). The time period provided after the effective date for compliance with these paragraphs (start-up dates) remains 180 days, the same as prescribed originally by paragraph (m)(2) of the EtO standard. That is, the start-up date for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) is one-hundred and eighty days (180) from the new effective date, or September 9, 1985. Paragraphs not requiring OMB clearance went into effect on August 21, 1984, and, with the exception of implementation of engineering controls required by paragraph (f)(1), have a start-up date 180 days from that date, or February 19, 1985. These paragraphs include compliance with the 1 ppm TWA (paragraph (c)), institution of work practice controls (paragraph (f)(1)), and provision for and selection of respirators (paragraphs (g) (1) an (2)). The start-up date for implementation of engineering controls specified in paragraph (f)(1) is one year from its effective date, or August 21, 1985.

Authority

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., N.W., Washington, D.C. 20210.

This action is taken pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599, 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, D.C. this 4th day of March 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 the Code of Federal Regulations is amended as set forth below:

1. By revising paragraph (m) of § 1910.1047 to read as follows:

§ 1910.1047 Ethylene Oxide.

* * * * *

(m) *Dates*—(1) *Effective date.* The paragraphs contained in this section shall become effective August 21, 1984, except for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) which shall become effective on March 12, 1985.

(2) *Start-up dates.* (i) The start-up date for the requirements in those paragraphs that were effective on August 21, 1984, including institution of work practice controls specified in paragraph (f)(1), shall be February 19, 1985, except as provided for in paragraph (m)(2)(ii), and the start-up date for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) shall be September 9, 1985.

(ii) Engineering controls specified by paragraph (f)(1) of this section shall be implemented by August 21, 1985.

* * * * *

§ 1910.1047 [Amended]

2. By adding the following language at the end of § 1910.1047:

[Approved by the Office of Management and Budget under control number 1218–0108, through January 31, 1986]

[FR Doc. 85–5812 Filed 3–11–85; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF COMMERCE

Assistant Secretary for Productivity, Technology and Innovation

37 CFR Ch. IV

[Docket No. 41277–4177]

Licensing of Government Owned Inventions

AGENCY: Commerce Department.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 98–620, which amended section 208 of Title 35, United States Code, authority to promulgate regulations concerning the licensing of Federally owned inventions has been shifted from the Administrator of General Services to the Secretary of Commerce. By this rule the Secretary is issuing final regulations which are identical in substance to and which supersede the regulations of GSA currently found at 41 CFR Subpart 101–4.1.

EFFECTIVE DATE: This rule is effective as of November 9, 1984, the effective date of Pub. L. 98–620. Suggestions for changes should be submitted by March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Latker, Director, Federal Technology Management Policy Division, Rm. H4835, Department of Commerce, Washington, D.C. 20230, Phone: (202) 377–0659.

SUPPLEMENTARY INFORMATION: To avoid any uncertainty as to applicable licensing procedures under section 208 of Title 35, United States Code, as amended by Pub. L. 98–620, we are adopting the following regulations, which are identical in substance to the GSA regulations that are superseded. The Department of Commerce will shortly be reviewing these regulations to determine if any changes are desirable. We welcome any suggestions for changes. It is the intent of the Department to issue a Notice of Proposed Rulemaking before revising these regulations.

This rulemaking relates to contracts and section 553(a)(2) of the Administrative Procedures Act provides an unqualified exclusion from every requirement of section 553 of the APA for all rules relating to "public property, loans, grants, benefits and contracts." 5 U.S.C. 553(a)(2). Therefore notice and comment and the 30 day delayed effective date are not required. The Regulatory Flexibility Act does not apply to this rulemaking because notice and comment are not required by 5 U.S.C. 553 or any other law. This rulemaking has no substantive effect, and consequently is not a major rule as defined in Executive Order 12291. The collection of information under this regulation has been approved by the Office of Management and Budget under GSA Control No. 3090–0108. A new Department of Commerce number will be assigned.

(35 U.S.C. 208)

List of Subjects 37 CFR Ch. IV

Inventions and patents.

Dated: March 6, 1985.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

Accordingly, a new Chapter IV is added to Title 37 of the Code of Federal Regulations consisting of Parts 400–403 which are reserved, and Part 404, to read as follows:

CHAPTER IV—ASSISTANT SECRETARY FOR PRODUCTIVITY, TECHNOLOGY AND INNOVATION, U.S. DEPARTMENT OF COMMERCE

PARTS 400–403 [RESERVED]

PART 404—LICENSING OF GOVERNMENT OWNED INVENTIONS

Sec.

404.1 Scope of part.
404.2 Policy and objective.
404.3 Definitions.
404.4 Authority to grant licenses.
404.5 Restrictions and conditions on all licenses granted under this part.
404.6 Nonexclusive licenses.
404.7 Exclusive and partially exclusive licenses.
404.8 Application for a license.
404.9 Notice to Attorney General.
404.10 Modification and termination of licenses.
404.11 Appeals.
404.12 Protection and administration of inventions.
404.13 Transfer of custody.
404.14 Confidentiality of information.

Authority: 35 U.S.C. 208; and section 3(g) of DOO 10–1.

§ 404.1 Scope of part.

This part prescribes the terms, conditions, and procedures upon which a federally owned invention, other than an invention in the custody of the Tennessee Valley Authority, may be licensed. It supersedes the regulations at 41 CFR Subpart 101–4.1. This part does not affect licenses which (a) were in effect prior to July 1, 1981; (b) may exist at the time of the Government's acquisition of title to the invention, including those resulting from the allocation of rights to inventions made under Government research and development contracts; (c) are the result of an authorized exchange of rights in the settlement of patent disputes; or (d) are otherwise authorized by law or treaty.

§ 404.2 Policy and objective.

It is the policy and objective of this subpart to use the patent system to promote the utilization of inventions arising from federally supported research or development.

§ 404.3 Definitions.

(a) "Federally owned invention" means an invention, plant, or design which is covered by a patent, or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection, in a foreign country, title to which has been assigned to or otherwise vested in the United States Government.

(b) "Federal agency" means an executive department, military department, Government corporation, or independent establishment, except the Tennessee Valley Authority, which has custody of a federally owned invention.

(c) "Small business firm" means a small business concern as defined in section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(d) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(e) "United States" means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 404.4 Authority to grant licenses.

Federally owned inventions shall be made available for licensing as deemed appropriate in the public interest. Federal agencies having custody of federally owned inventions may grant nonexclusive, partially exclusive, or exclusive licenses thereto under this part.

§ 404.5 Restrictions and conditions on all licenses granted under this part.

(a)(1) A license may be granted only if the applicant has supplied the Federal agency with a satifactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under a federally owned invention in the United States shall normally be granted only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) Licenses shall contain such terms and conditions as the Federal agency determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this part. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated in accordance with this part.

(2) The license may be granted for all or less than all fields of use of the

invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of the Federal agency, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The licensee may provide the license the right to grant sublicenses under the license, subject to the approval of the Federal agency. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of such sublicense shall be furnished to the Federal agency.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report periodically on the utilization or efforts at obtaining utilization that are being made by the licensee, with particular reference to the plan submitted.

(7) Licenses may be royalty-free or for royalties or other consideration.

(8) Where an agreement is obtained pursuant to § 404.5(a)(2) that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of the Federal agency to terminate the license, in whole or in part, if:

(i) The Federal agency determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) The Federal agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated, consistent with this part, upon mutual agreement of the Federal agency and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

§ 404.6 Nonexclusive licenses.

(a) Nonexclusive licenses may be granted under federally owned inventions without publication of availability or notice of a prospective license.

(b) In addition to the provisions of § 404.5, the nonexclusive license may also provide that, after termination of a period specified in the license agreement, the Federal agency may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license in accordance with this subpart.

§ 404.7 Exclusive and partially exclusive licenses.

(a)(1) Exclusive or partially exclusive domestic licenses may be granted on federally owned inventions three months after notice of the invention's availability has been announced in the Federal Register, or without such notice where the Federal agency determines that expeditious granting of such a license will best serve the interest of the Federal Government and the public; and in either situation, only if:

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the Federal Register, providing opportunity for filing written objections within a 60-day period;

(ii) After expiration of the period in § 404.7(a)(1)(i) and consideration of any written objections received during the period, the Federal agency has determined that:

(A) The interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) The desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(D) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(iii) The Federal agency has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws; and

(iv) The Federal agency has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(2) In addition to the provisions of § 404.5, the following terms and conditions apply to domestic exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall reserve to the Federal agency the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(iii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iv) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of Chapter 29 of Title 35, United States Code, or other statutes, as determined appropriate in the public interest.

(b)(1) Exclusive or partially exclusive licenses may be granted on a federally owned invention covered by a foreign patent, patent application, or other form of protection, provided that:

(1) Notice of a prospective license, identifying the invention and prospective licensee, has been published in the Federal Register, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(ii) The agency has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(iii) The Federal agency has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(2) In addition to the provisions of § 404.5 the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iii) The license may grant the licensee the right to take any suitable and necessary actions to protect the licensed property, on behalf of the Federal Government.

(c) Federal agencies shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

§ 404.8 Application for a license.

An application for a license should be addressed to the Federal agency having custody of the invention and shall normally include:

(a) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether the applicant is a small business firm as defined in § 404.3(c)

(h) A detailed description of applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under federally owned inventions;

(j) A statement containing applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 404.9 Notice to Attorney General.

A copy of the notice provided for in §§ 404.7(a)(1)(i) and 404.7(b)(1)(i) will be sent to the Attorney General.

§ 404.10 Modification and termination of licenses.

Before modifying or terminating a license, other than by mutual agreement, the Federal agency shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license shall not be modified or terminated.

§ 404.11 Appeals.

In accordance with procedures prescribed by the Federal agency, the following parties may appeal to the agency head or designee any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license:

(a) A person whose application for a license has been denied.

(b) A licensee whose license has been modified or terminated, in whole or in part; or

(c) A person who timely filed a written objection in response to the notice required by § 404.7(a)(1)(i) or § 404.7(b)(1)(i) and who can demonstrate to the satisfaction of the Federal agency that such person may be damaged by the agency action.

§ 404.12 Protection and administration of inventions.

A Federal agency may take any suitable and necessary steps to protect and administer rights to federally owner inventions, either directly or through contract.

§ 404.13 Transfer of custody.

A Federal agency having custody of a federally owned invention may transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in such invention.

§ 404.14 Confidentiality of information.

Title 35, United States Code, section 209, provides that any plan submitted pursuant to § 404.8(h) and any report required by § 404.5(b)(6) may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of Title 5 of the United States Code.

[FR Doc. 85-5832 Filed 3-11-85; 8:45 am]

BILLING CODE 1310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-460; RM-4709]

FM Broadcast Stations, Lordsburg, NM; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.