(2) *Custodian* means a bank or other person authorized to hold Assets for the Fund under section 17(f) of the Act (15 U.S.C. 80a–17(f)) or Commission rules in this chapter, but does not include a Fund itself, a Safekeeping Facility, or a Foreign Custodian.

(3) *Foreign Custodian* means a custodian whose use is governed by § 270.17f–5 or § 270.17f–7.

(4) *Fund* means an investment company registered under the Act.

(5) *Intermediary Custodian* means any subcustodian through which a Custodian maintains any Assets with a Securities Depository, if the subcustodian is qualified to act as a Custodian.

(6) *Officer's Instruction* means a request or direction to a Securities Depository or its operator in the name of the Fund by one or more persons authorized by the Fund's board of directors (or by the Fund's trustee, if the Fund is a Non-Management Company) to give it.

(7) *Non-Management Company* means a Fund that is a unit investment trust or a face-amount certificate company.

(8) *Safekeeping Facility* means any vault, safe deposit box, or other repository for safekeeping maintained by a bank or other company whose functions and physical facilities are supervised by a federal or state authority, if the Fund maintains its own Assets there in accordance with § 270.17f–2.

(9) *Securities Depository* means a system for the central handling of Assets in which Assets are treated as fungible and are transferred, pledged, or otherwise acquired or disposed of by bookkeeping entry without physical delivery, or by physical delivery within or through the system.

Note to § 270.17f–4: If a Fund's (or its custodian's) custody arrangement with a Securities Depository involves one or more Eligible Foreign Custodians (as defined in § 270.17f–5) through which assets are maintained with the Securities Depository, § 270.17f–5 will govern the Fund's (or its custodian's) use of each Eligible Foreign Custodian.

Dated: November 15, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29021 Filed 11–20–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule outlines the conditions for appropriate use enacted by law, defines a nontraditional Defense contractor, and provides audit policy application to transactions other than contracts, grants or cooperative agreements for prototype projects. It directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of any such transaction.

DATES: Comments on the proposed rule must be received in writing to the address specified below on or before January 22, 2002, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Office of the Director, Defense Procurement, Attn: Ms. Teresa Brooks, PDUSD(A&T)/DP(CPA), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 614–1254.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695–8567.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Pub.L. 103–160, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as ''other transaction'' agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to ''other transactions'' for prototype projects.

Part 3 to 32 CFR was initially established to implement the section 801 of the National Defense Authorization Act for Fiscal Year 2000 requirement that an ''other transaction'' agreement for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records. However, there are additional requirements that now warrant public comment and expansion of part 3 to 32 CFR. Specifically, section 803 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub.L. 106–398) identified conditions for appropriate use of the authority and defined a nontraditional Defense contractor. In addition, the Department has developed audit policy applicable to transactions for prototype projects. These additional requirements are addressed in this proposed rule.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review.''

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Pub.L. 104–4).

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Pub.L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601).

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

Pub.L. 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. 3501 et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132).

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 3

Grants program.

Accordingly, part 3 to 32 CFR proposed to be amended as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

1. The authority citation for part 3 is revised to read as follows:

Authority: Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub.L. 103–160), as amended.

2. Section 3.1 is proposed to be revised to read as follows:

§ 3.1 Purpose.

This part consolidates rules that implement section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, as amended, and have a significant impact on the public. Section 845 authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency, and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants, or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

3. Section 3.4 is proposed to be redesignated as section 3.6 and §§ 3.2 and 3.3 are proposed to be redesignated as §§ 3.3 and 3.4.

4. New § 3.2 is proposed to be added to read as follows:

§ 3.2 Background.

''Other transactions'' is the term commonly used to refer to the 10 U.S.C. 2371 authority to enter into transactions other than contracts, grants or cooperative agreements. ''Other Transactions'' are generally not subject to the federal laws and regulations limited in applicability to contracts, grants or cooperative agreements. As such, they are not required to comply with the Federal Acquisition Regulation (FAR) and its supplements.

5. Newly redesignated section 3.4 is proposed to be amended to add the following new definitions in alphabetical order:

§ 3.4 Definitions.

Agreements Officer. An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make regulated determinations and findings.

Business unit. Any segment of an organization, or an entire business organization which is not divided into segments.

* * * * *

Key participant. A business unit that makes a significant contribution to the prototype project. Examples of a ''significant contribution'' include supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in performance.

Nontraditional defense contractor. A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on

(1) Any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

(2) Any other contract is excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

Procurement contract. A contract award pursuant to the Federal Acquisition Regulation.

Segment. One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

Senior Procurement Executive. (1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology); (2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition); (3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition). (4) The Directors of Defense Agencies have been delegated authority to act as Senior Procurement Executive for their respective agencies.

6. New section 3.5 is proposed to be added to read as follows:

§ 3.5 Appropriate use.

(a) In accordance with statute, this authority may be used only when:

(1) At least one nontraditional Defense contractor is participating to a significant extent in the prototype project; or

(2) No nontraditional Defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

(i) At least one third of the total cost of the prototype project is to be paid out of funds provided by non-Federal parties to the transaction.

(ii) The Senior Procurement Executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract.

(b) When a nontraditional Defense contractor is not participating to a significant extent in the prototype project and cost-sharing is the reason for using OTA, then the non-Federal amounts counted as provided, or to be provided, by a party to the OT agreement (including any entity that participates in the performance of the agreement or a subordinate element of the party or entities) may not include costs that were incurred before the date on which the OT agreement becomes effective. Costs that were incurred for a prototype project by a party, entity or subordinate element after the beginning of negotiations, but prior to the date the OT agreement becomes effective, may be counted as non-Federal amounts if and to the extent that the Agreements Officer determines in writing that

(1) The party, entity or subordinate element incurred the costs in anticipation of entering into the OT agreement; and

(2) It was appropriate for the party, entity or subordinate element to incur the costs before the OT agreement became effective in order to ensure the successful implementation of the OT agreement. As a matter of policy, these same restrictions apply any time cost-sharing may be recognized when using OTA.

7. Section 3.7 is proposed to be added to read as follows:

§ 3.7 Audit policy.

(a) *General.* This policy applies only when an agreement:

(1) Uses amounts generated from the awardee's financial or cost records as the basis for payment, or

(2) Requires at least one third of the total costs to be provided by non-federal parties pursuant to statute. For example, this policy applies when an agreement calls for interim or actual cost reimbursement, including payable milestones that provide for adjustment based on amounts generated from the awardee's financial or costs records. In these circumstances, Agreements Officers must include appropriate audit access clauses in the agreement. Sample clauses are provided in paragraph (g) of this section. Sample 3 must be used verbatim when the use of an independent public accountant (IPA) is authorized. Agreement Officers may tailor the remaining sample clauses, but

must ensure all such clauses are structured consistently with this guidance in this policy.

(b) *Key participants.* In addition, Agreements Officers must require awardees to insert an appropriate audit access clause in awards to key participants who:

(1) Contribute to the statutory cost share requirement or

(2) Are expected to receive payments that exceed $300,000 and will be based on amounts generated from financial or cost records. Unless otherwise permitted by the Agreements Officer, the sample clauses may be altered by the awardee only as necessary to identify properly the contracting parties and the Agreements Officer.

(c) *Frequency of audits.* An agreement audit normally will be peformed only when the Agreements Officer determines it is necessary to verify the awardee's compliance with the terms of the agreement.

(d) *Means of accomplishing any required audits.* (1) *Single Audit Act.* When the awardee or key participant is a state government, local government, or nonprofit organization whose Federal procurement contracts and financial assistance agreements are subject to the Single Audit Act (Public Law 104–156, dated 5 July 1996), the agreement must follow the provisions of that Act. The Single Audit Act is implemented by OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' and DoD Directive 7600.10 [1], ''Audits of State and Local Governments, Institutions of Higher Education, and Other Nonprofit Institutions.'' The Act is intended to minimize the duplication of audit activity and provides for the use of IPAs, to conduct annual audits of state or local governments and educational or other nonprofit organizations.

(2) *Business units currently performing on procurement contracts subject to the Cost Principles or Cost Accounting Standards.* DCAA must perform any necessary audits if, at the time of agreement award, the awardee or key participant is performing a procurement contract that is subject to the Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) and is not subject to the Single Audit Act. Any decision to not use DCAA in such cases must be approved by the DoD Office of the Inspector General (OIG) prior to awarding an agreement that provides for the possible use of an IPA. When such cases arise, Agreements Officers should contact the Deputy Assistant Inspector General (Audit Policy and Oversight).

(3) *Business units not currently performing on procurement contracts subject to the cost principles or cost accounting standards.* DCAA or a qualified IPA may perform any necessary audit if, at the time of agreement award, the awardee or key participant is not performing a procurement contract subject to the Cost Principles or Cost Accounting Standards and is not subject to the Single Audit Act. An IPA may be used only when there is a statement in the Agreements Officer's file that the business unit:

(i) Is not performing a procurement contract subject to the Cost Principles or Cost Accounting Standards at the time of agreement award, and

(ii) Will not accept the agreement if the Government has access to the business unit's records. Agreements Officer should grant approval to use an IPA in this instance and provide input in Part III of the required annual report submission. The Part III input must identify, for each business unit that is permitted to use an IPA, the business unit's name and address and the expected value of its award. The IPA is to be paid by the awardee or key participant. This cost will be reimbursable based on the business unit's established accounting practices and subject to any limitations in the agreement. The Agreements Officer is responsible for determining, with advice from the OIG, whether an IPA audit has been performed in accordance with Generally Accepted Government Auditing Standards.

(A) *Necessary provisions.* The agreement must include the Sample 3 audit access clause verbatim, when the use of an IPAA is authorized.

(B) *Awardee flow-down responsibilities.* Agreements must require awardees to include the ''necessary provisions'' in agreements with key participants receiving total payments that

(*1*) Exceed $300,000;

(*2*) Are based on amounts generated from cost or financial records or contribute to statutory cost share requirements; and

(*3*) Provide for use of an IPA. In such cases, the awardee must provide written notice, identifying the business unit name and address and expected value of award, to the Agreements Officer. However, the key participant may provide the information directly to the Agreements Officer if this is agreeable to the awardee.

(e) *Scope of required audits.* The Agreements Officer should coordinate with the auditor regarding the nature of any review to be conducted. The Agreements Officer may request a traditional audit, where the auditor determines the scope of the review, or the Agreements Officer may request a review of only specific cost elements. While the auditor also determines the scope of these reviews, the reviews are limited to the cost elements specified by the Agreements Officer. For example, the Agreements Office might request a review of only the direct labor costs. Finally, the Agreements Officer may request an ''agreed-upon procedures'' review. Under this review, the Agreements Officer specifies not only the cost elements to be reviewed, but also the procedures to be followed in conducting that review. For example, the Agreements Officer might request that the auditor verify the costs claimed to the awardee's general and job cost ledgers.

(f) *Length and extent of access.* (1) Agreements must provide for the Agreements Officer's authorized representative to have direct access to sufficient records to ensure full accountability for all Government funding or statutorily required cost share under the agreement. This access must be allowed for a specified period of time (normally 3 years) after final payment, unless notified otherwise by the Agreements Officer. In the case where an IPA is used, the representative must have direct access to the IPA's audit reports and working papers to ensure accountability for funding or cost share.

(2) In accordance with statute, if an agreement gives the Agreements Officer or another DoD component official access to a business unit's records, the DoDIG and GAO must receive the same access to those records.

(g) *Sample audit access clauses.* (1) *Sample 1:* Clause for awardees [insert name, if desired], that have a contract, grant, or cooperative agreement subject to the Single Audit Act:

The awardee shall comply with all aspects of the Single Audit Act.

(2) *Sample 2:* Clause for awardees [insert name, if desired] that are not subject to the Single Audit Act but have a contract subject to Cost Principles and/or Cost Accounting Standards:

The Agreements Officer, or an authorized representative, shall have the right to examine or audit the awardee's records during the period of the agreement and for three years after final payment, unless notified otherwise by the Agreements Officer. The Agreements Officer, or an authorized representative, shall have direct access to sufficient records to ensure full accountability for all Government funding or to verify statutorily required cost share under the agreement.

[1] Copies may be obtained via Internet at http://www.dtic.mil/whs.directives.

(3) *Sample 3:* Clause for awardees [insert name, if desired] that are not subject to the Single Audit Act, do not have a procurement contract subject to Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99), and refuse to accept Government access to their records:

The Agreements Officer shall have the right to request an examination or audit of the awardee's records during the period of the agreement and for three years after final payment, unless notified otherwise by the Agreements Officer. The audit will be conducted by an independent public accountant (IPA), subject to the following conditions:

(i) The audit shall be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS).

(ii) The Agreements Officers' authorized representative shall have the right to examine the IPA's audit report and working papers for 3 years after final payment or three years after issuance of the audit report, whichever is later, unless notified otherwise by the Agreements Officer.

(iii) The IPA shall send copies of the audit report to the Agreements Officer and the Assistant Inspector General (Audit Policy and Oversight) [AIG(APO)], 400 Army Navy Drive, Suite 737, Arlington, VA 22202.

(iv) The IPA shall report instances of suspected fraud directly to the DoDIG.

(v) When the Agreements Officer determines (subject to appeal under the disputes clause of the agreement) that the audit has not been performed within twelve months of the date requested by the Agreements Officer or has not been performed in accordance with GAGAS or any other pertinent provisions of the agreement, the Government shall have the r8ight to require corrective action by the awardee. The awardee may take corrective action by having the IPA correct any deficiencies identified by the Agreements Officer, having another IPA perform the audit, or electing to have the Government perform the audit. If corrective action is not taken, the Agreements Officer shall have the right to take one or more of the following actions:

(A) Withhold or disallow a percentage of costs until the audit is completed satisfactorily;

(B) Suspend performance until the audit is completed satisfactorily; and/or

(C) Terminate the agreement.

(vi) If it is found that the awardee was performing a procurement contract subject to Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award, the Agreements Officer, or an authorized representative, shall have the right to audit sufficient records of the awardee to ensure full accountability for all Government funding or to verify statutorily required cost share under the agreement. The awardee shall retain such records for three years after final payment, unless notified otherwise by the Agreements Officer.

(4) *Sample 4:* Clause for all awardees for flowing down requirements:

The awardee shall flow down the applicable audit access requirements in agreements with key participants who contribute to statutory cost share requirements or will receive total payments that exceed $300,000 and are based on amounts generated from cost or financial records. The awardee shall request audits of key participants when the Agreements Officer advises that audits are necessary. The Agreements Officer will provide sample audit access clauses to the awardee. Unless otherwise permitted by the Agreements Officer, the awardee shall alter the sample clauses only as necessary to identity properly the contracting parties and the Agreements Officer. The awardee shall provide a statement to the Agreements Officer when a business unit meets the conditions for use of an Independent Public Accountant (other than pursuant to the Single Audit Act) for any needed audits. The statement shall include the business unit's name and address, and the expected value of its award. The statement must show that the business unit currently is not performing on a procurement contract subject to the Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) and refuses to allow Government access to its records. The key participant may provide this statement directly to the Agreements Officer if this is agreeable to the awardee.

Dated: November 15, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–29008 Filed 11–20–01; 8:45 am]

BILLING CODE 5001–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7106–2]

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: The EPA is proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This action changes the deadline for existing sources submitting precompliance plans. Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With this action, these plans will be due by March 23, 2002.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making this change in a direct final rule without prior proposal because we view it as minor and noncontroversial, and we anticipate no adverse comments. We have explained our reasons for this change in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive an adverse comment on the revised definition, we will publish a timely withdrawal of the direct final rule, and it will not take effect. If we receive adverse comment, we will respond to all such comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by December 6, 2001.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed below in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, North Carolina 27709), telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data