"received by the insured." insert "Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured."

12. In § 280.97(b)(2), under "*Certification:*", the first paragraph of 2.e., is revised to read as follows:

* * * * *

2. * * *

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

* * * * *

13. Section 280.105 is amended by revising paragraph (a)(2) to read as follows:

§ 280.105 Cancellation or nonrenewal by a provider of financial assurance.

* * * * *

(a) * * *

(2) Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

* * * * *

[FR Doc. 89-26104 Filed 11-8-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42108; FRL 3662-7]

RIN 2070-AB07

Testing Consent Order on Crotonaldehyde

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces that EPA has signed an enforceable testing Consent Order with Eastman Kodak Company (Kodak). Kodak has agreed to perform certain chemical fate and environmental effects tests on crotonaldehyde (CAS No. 4170-30-3). Kodak may also perform a monitoring study for crotonaldehyde, as described in this notice and detailed in the Order. This action, in response to the Toxic Substances Control Act (TSCA) Interagency Testing Committee's (ITC's) designation of crotonaldehyde for testing consideration, adds crotonaldehyde to the list of testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR part 707 apply.

EFFECTIVE DATE: November 9, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR part 790, Kodak has entered into a testing Consent Order with EPA in which Kodak has agreed to perform certain chemical fate and environmental effects tests for crotonaldehyde. This rule amends 40 CFR 799.5000 by adding crotonaldehyde to the list of chemical substances and mixtures subject to testing Consent Orders.

I. ITC Recommendation

In its twenty-second Report to EPA, published in the Federal Register of May 20, 1988 (53 FR 18196), the Interagency Testing Committee (ITC) recommended with intent-to-designate that crotonaldehyde be considered for environmental effects and chemical fate testing. the recommended environmental effects testing was acute toxicity to algae, fish, and aquatic invertebrates. Recommended chemical fate testing was volatilization rate from water and aerobic aquatic biodegradation.

EPA responded to the ITC's designation of crotonaldehyde by holding a public focus meeting on June 17, 1988, announcing that it would pursue testing for crotonaldehyde, either by a TSCA section 4 testing rule or by a Consent Order. The proposed testing would include both chemical fate and environmental effects.

In its Twenty-third Report, published in the Federal Register of November 18, 1988 (53 FR 46262), the ITC followed on its recommendation by designating crotonaldehyde for response by EPA within 12 months.

II. Testing Consent Order Negotiations

In the Federal Register of May 20, 1988 (53 FR 18196), and in accordance with the procedures established in 40 CFR 790.22, EPA requested persons interested in participating in or monitoring testing negotiations on crotonaldehyde to contact EPA. EPA held public meetings with interested parties on July 21, 1988, October 19, 1988, and March 3, 1989, to discuss the testing appropriate for crotonaldehyde. On October 2, 1989 EPA and Kodak signed a testing Consent Order for crotonaldehyde. A consent order is not based on a formal finding and expedites testing, while retaining the same TSCA penalty provisions applicable under rulemaking. Under the Order, Kodak has agreed to conduct or provide for the conduct of aquatic toxicity tests and aerobic aquatic biodegradation testing. Kodak has also agreed to perform chronic toxicity testing of aquatic organisms depending on the results of the acute toxicity testing and, if conducted, the results of effluent monitoring. the specific test standards to be followed and the testing schedule for each test are included in the Order. Procedures for submitting study plans, modifying the Order, monitoring the testing and other provisions are also included in the Order.

III. Use and Exposure

Crotonaldehyde, also known as 2-butenal, is a four-carbon aldehyde having a double bond between the alpha and beta carbon atoms. Crotonaldehyde is typically manufactured by aldol condensation of acetaldehyde followed by dehydration (Ref. 1). Crotonaldehyde is liquid at environmental temperatures (Ref. 2). It is highly soluble in water (181 g/L, measured), moderately volatile (estimated Henry's law constant of 1.681×10^{-5} atm m^3/mole at 20°C), and has an estimated low Log P value of 0.55 (Refs. 3, 4, and 5).

Crotonaldehyde is used mostly as an intermediate to produce crotonic acid, sorbic acid, 3-methoxybutanol and *n*-butanol. Less commonly, it may have such diverse uses as an additive to wool to reduce solubility in alkali, a plasticizer of terpene resins, and a deodorizer in the paper industry, and in the preparation of some pesticides (Ref. 1).

Crotonaldehyde is produced in the United States by only one company, Kodak, which produces crotonaldehyde by a continuous process with a reported 1987 production volume between 5 and

15 million pounds (Ref. 6). No imports of crotonaldehyde into the United States are currently reported; however, in 1985, 930,953 pounds of crotonaldehyde were imported into the United States from Mexico (Ref. 7).

Kodak reports that is converts approximately one-third of the crotonaldehyde that it produces into crotonic acid, using an enclosed process. Kodak believes that all of the crotonaldehyde that it sells is used as a chemical intermediate, and none is used to formulate products (Ref. 8).

Kodak estimates that up to 20 manufacturing workers might be exposed to crotonaldehyde. Worker exposure levels, determined by industrial monitoring, are generally less than 0.01 ppm [8-h Time-Weighted Average (TWA)]; Kodak reported a single maximum exposure level of 1.13 ppm, which occurred under an upset condition (Ref. 8.).

Environmental exposures to crotonaldehyde can occur during its transportation, use, processing, and manufacture. EPA has estimated exposures to crotonaldehyde at Kingsport, TN, the site of Kodak's effluent discharge to the Holston River, to be 65 ppb during mean river flow conditions and 350 ppb during strictly natural 7Q10 low flow conditions (i.e., the lowest 7-day average river flow expected to occur once every 10 years). Monthly average concentrations are expected to range from 45 ppb to 67 ppb (Ref. 4). However, it should be noted in this context that the Holston River's flow is not as variable as it would be if it were a "wild" river, as its flow is controlled by contractural arrangements with the Tennessee Valley Authority (TVA) through several dams and holding ponds located on the River. EPA is examining what effects these contractual arrangements with TVA have on mitigating the Holston's natural flow variability and, hence, on the predicted concentrations of crotonaldehyde in the River.

Crotonaldehyde also occurs naturally, having been found in strawberries, algae-containing sedimentary deposits, and humans, apparently being produced as a metabolite of other substances (Refs. 5, 9, and 10). Crotonaldehyde is also a common combustion product of wood and hydrocarbon-based fuels (gasoline, jet fuel, etc.). Concentrations of crotonaldehyde in the exhaust/smoke from these sources have been measured, and range from 6 ppb to 116 ppm, with the highest values found in wood smoke (Refs. 5 and 11 through 13).

IV. Testing Program; Chemical Fate and Environmental Effects

The ITC recommended crotonaldehyde for chemical fate and environmental effects testing. The ITC did not recommend health effects testing, stating that crotonaldehyde has been extensively studied for health effects. EPA concurs with the ITC's recommendations.

Specifically, the ITC recommended aquatic biodegradation and volatility testing and acute aquatic toxicity testing.

A. Chemical Fate Testing

Volatilization of crotonaldehyde can be estimated using the calculated Henry's Law constant. The estimate thus obtained indicates that crotonaldehyde has a moderate volatilization half-life of 60 to 70 hours at 20 °C (Ref. 14). In air, crotonaldehyde photolyzes relatively quickly, with a half-life of only a few hours (Ref. 14). Information on crotonaldehyde's removal by acclimated sludge shows 37 percent removal of maximum theoretical oxygen demand, (ThOD) (Ref. 11). EPA estimates that, during wastewater treatment, 40 percent of crotonaldehyde will be removed, mostly by biodegradation (Ref. 4).

In view of this information, and information on crotonaldehyde's release to the environment, the ITC recommended additional studies on volatilization from water and aerobic biodegradation. Specific testing on these key removal processes would enable EPA to better predict crotonaldehyde's fate in the environment.

EPA intends that the chemical fate and environmental effects testing needed for crotonaldehyde be conducted under the sponsorship of Kodak under this Consent Order.

Although the ITC recommended both volatility and aerobic aquatic biodegradation testing, the chemical fate testing is limited in this Consent Order to the biodegradation testing for technical reasons. At the present time, EPA considers reliable tests for determining volatility to be available only for high- or low-volatility chemicals, but not for medium-volatility substances, such as crotonaldehyde. Therefore, EPA will continue to depend upon estimates of crotonaldehyde's volatility, as given in Unit III of this document. An indication of volatility will also be obtained during the algal bioassay, wherein the Consent Order requires that losses of test substance due to volatility be roughly estimated by measuring concentrations of crotonaldehyde in the test chambers and comparing these to the nominal, expected concentrations. The results of this volatility "measurement" are also relevant to the type of aerobic aquatic biodegradation test to be performed. If volatility, as observed in the algal assay, is greater than 15 percent over 96 hours, then a closed-bottle test (40 CFR 796.3200) shall be used; if volatility is less than or equal to 15 percent, then the modified Organization for Economic Cooperation and Development (OECD) test (40 CFR 796.3240) shall be used. Protocols and decision criteria as to which test will be used are specified in the Consent Order, and testing will be in accordance with the schedules and test protocols specified in the Order.

B. Environmental Effects Testing

Crotonaldehyde has been tested using a number of different aquatic organisms. The most relevant tests have been static 96-hour bioassays with bluegills, Lepomis macrochirus (96-hour LC_{50} of 3.5 mg/L), fathead minnows, Pimephales promelas (96-hour LC_{50} of 2.8 mg/L), and a saltwater fish, the tidewater silversides, Menidia beryllina (96-hour LC_{50} of 1.3 mg/L) (Refs. 15 and 16).

These acute toxicity values demonstrate that crotonaldehyde may have significant acute toxicity to marine and freshwater fish. Since the data were obtained using often less reliable static bioassay systems, the ITC recommended additional acute toxicity testing in flow-through or static-renewal tests. The ITC also recommended that additional environmental species be tested, to include algae.

Kodak has agreed to conduct or sponsor the conduct of acute toxicity tests on five species: -The algal species, Selanastrum capricornutum; two freshwater invertebrate species, the daphnid, Daphnia magna, and the gammarid, Gammarus fasciatus; and two freshwater fish species, the fathead minnow, Pimephales promelas, and the rainbow trout, Oncorhynchus mykiss (formerly Salmo gairdneri). All of these tests will be performed in accordance with the schedules and test protocols specified in the Order.

The Consent Order also requires daphnid chronic toxicity testing and fish early life stage (ELS) toxicity testing on the more sensitive fish (rainbow trout or fathead minnow). This aquatic chronic toxicity testing is required because EPA has calculated that the ratio of acute toxicity (48-hour or 96-hour EC_{50} or LC_{50} value) to the predicted environmental concentration (PEC) of crotonaldehyde in the Holston River is less than or equal to 100. If the fish acute toxicity data are equivocal regarding relative species sensitivity, EPA and Kodak will, if

requested by Kodak, meet to discuss the interpretation of the acute toxicity data as to which fish species will be required to undergo early life stage (ELS) testing. If Kodak and EPA cannot come to agreement, EPA has the final authority in selecting the test species. EPA will provide Kodak in writing with its reasoning for requiring one test species over another.

Kodak believes EPA's PEC for the Holston River is too high, and has volunteered to measure effluent crotonaldehyde concentrations from their facility in Kingsport, Tennessee, that releases wastewater to the Holston River. Independent of the results of these effluent measurements, EPA will use two alternate criteria to require the chronic aquatic toxicity testing: (1) If any EC_{50} or LC_{50} value from conducting the five acute tests listed above is less than, or equal to, 1.0 mg/L, or (2) if any fish or aquatic invertebrate toxicity EC_{50} or LC_{50} value is less than, or equal to, 100 mg/L and there is also an indication of potential cumulative toxicity (the ratio of 24–hour to 48–hour or 24–hour to 96–hour toxicity values is greater than, or equal to, 2).

Daphnid chronic toxicity testing and fish ELS testing will not be required if all of the following conditions are met:

1. All five acute toxicity test values are greater than 1.0 mg/L.

2. All fish and aquatic invertebrate toxicity test values are less than or equal to 100 mg/L and there is no potential cumulative toxicity as defined in the Consent Order, or all fish and aquatic invertebrate toxicity test values are greater than 100 mg/L.

3. Aquatic concentration modelling by EPA using Kodak's measured effluent crotonaldehyde concentrations and best available flow data for the Holston River demonstrate that the ratio of the lowest acute toxicity value to the PEC (using the 7Q10 as the reference value) is greater than 100.

Neither the ITC nor EPA believes that bioconcentration will pose any environmental hazards. the low Log P of crotonaldehyde, estimated to be 0.55, strongly suggests that there is no significant potential for bioconcentration (Ref. 5).

C. Monitoring Study

EPA and Kodak have also included an optional monitoring study in the Consent Order. Wastewater effluent from Kodak's Kingsport plant, which ultimately empties into the Holston River, may be monitored for crotonaldehyde concentrations. Kodak may monitor its own wastewater effluent rather than the Holston River, itself, for reasons of ease (a less complicated experimental design) and expense (fewer samples needed for a comparably accurate measure of statistical variability). There is a trade–off, however, in that EPA will need to use the effluent monitoring data earlier in its environmental model calculations than would be the case with river sampling data. Nonetheless, the measured concentrations from the effluent should give more accurate estimates of crotonaldehyde concentrations in the river than do present estimates, which are based mainly on theoretical considerations. The effluent monitoring study will also address the question of the efficiency of removal of crotonaldehyde by Kodak's wastewater treatment system, which EPA has estimated to be 40 percent.

EPA's basic interest in this study lies in whether or not it will refute or verify the need for chronic toxicity testing of crotonaldehyde on aquatic species based on present PEC and acute toxicity data. Therefore, this study is not required, and Kodak has discretion as to whether or not it is conducted. If Kodak chooses not to conduct the monitoring study, EPA will rely on the currently existing exposure estimates, along with the results of the acute toxicity tests to determine whether chronic toxicity tests shall be conducted. Obviously, if the acute testing required under the Consent Order indicates a need for chronic testing (by an EC_{50} or LC_{50} value less than, or equal to, 1.0 mg/L or potential cumulative toxicity), as described in Unit IV.B of this notice, then Kodak would forego the monitoring study, because its results will have no effect on the chronic toxicity testing requirement. Kodak may also decide, for other reasons, to proceed with the chronic testing regardless of the acute toxicity testing results and without performing the monitoring study.

If Kodak decides to perform the monitoring study, then the study design and schedule that must be followed are those specified in the Consent Order. If Kodak decides not to perform the monitoring study, then it must notify EPA of its decision and proceed with chronic testing on the daphnid and the most sensitive fish species, as is also specified in the Consent Order.

D. Test Standards and Schedules

The tests, their standards, and schedules are those specifically contained in the Consent Order for crotonaldehyde. The basic test standards are as follows:

Standard	Guideline in 40 CFR
Fresh water algal acute	797.1050
Daphnid acute	797.1300
Gammarid acute	797.1310
Rainbow trout acute	797.1400
Fathead minnow acute	797.1400
Daphnid chronic	797.1330
Fish early life stage	797.1600
Aerobic biodegradation	796.3200 or 796.3240
Effluent monitoring	[1]

[1] Testing protocoldevelopment by Kodak, reviewed and approved by EPA, and specified in the Consent Order

All of the above test standards have undergone certain minor modifications. these modified standards have been appended to the Consent Order.

Testing will be in accordance with the following schedule:

Test	Reporting requirement	Final report date
Freshwater algae acute	12 months	November 9, 1990.
Daphnid acute	12 months	Do.
Gammarid acute	12 months	Do.
Rainbow trout acute	12 months	Do.
Fathead minnow acute	12 months	Do.
Aerobic biodegradation	12 months	Do.
Effluent monitoring	18 months	May 9, 1991.
Daphnid chronic	21 months [1]	August 9, 1991.
Fish early life stage	21 months [1]	Do.
Daphnid chronic	27 months [2]	February 10, 1992.
Fish early life stage	27 months [2]	Do.

[1] This schedule applies if the effluent monitoring study is not performed, or if acute or potential cumulative toxicity data indicate a need for chronic testing.
[2] This schedule applies if the effluent monitoring study is performed and exposure data still indicate a need for chronic testing.

EPA has specified a longer time than normal for the toxicity and aerobic biodegradation tests, because of volatility questions and a need to develop some practical volatility data relevant to the conduct of these tests (i.e., use of open or closed systems, appropriate flow rate factors). Thus, EPA is allowing 12 months from the effective date to the final report due date for these tests for crotonaldehyde.

The final report for each test shall be submitted to EPA as soon as it becomes available, but no later than the date specified. For all except the five acute studies and the biodegradation study, interim progress reports shall also be submitted every 6 months, beginning 6 months after the effective date of this final rule.

V. Export Notification

The issuance of the Consent Order subjects any person who exports or intends to export crotonaldehyde, to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR part 707. In the Interim Rule of June 30, 1986 (51 FR 23706), establishing the Testing Consent Order process, EPA added subpart C of part 799 for listing of chemical substances or mixtures subject to testing consent orders issued by EPA. This listing serves as notification to persons who export or intend to export chemical substances or mixtures which are the subject of testing Consent Orders that 40 CFR part 707 applies.

VI. Rulemaking Record

EPA has established a record for this rule and the Consent Order (docket number OPTS-42108). This record contains the basic information considered by EPA in developing this rule and the testing Consent Order.

This record includes the following information:

A. Supporting Documentation

(1) Testing Consent Order between Kodak and EPA.

(2) Federal Register notices pertaining to this notice consisting of:

(a) Notice containing the ITC's recommendation of crotonaldehyde to the Priority List (53 FR 18196; May 20, 1988).

(b) Notice containing the ITC's designation of crotonaldehyde to the Priority List (53 FR 46262; November 16, 1988).

(c) Notice of the interim final rule on procedures for developing enforceable consent agreements (51 FR 23706; June 30, 1986).

(3) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

(1) Kirk-Othmer. *Kirk-Othmer Encyclopedia of Chemical Technology.* New York, N.Y. John Wiley & Sons, Inc. Vol. 7. pp. 207–218, (1979).

(2) Sax, N.I., and Lewis, R.J., Sr. *Hawley's Condensed Chemical Dictionary.* 11th rev. ed. New York. Van Nostrand Reinhold Co. p. 323. (1987).

(3) Merck. *The Merck Index.* 10th edition. Windholz, M., ed. Rahway, N.J. Merck & Co. p. 372. (1983).

(4) Nold, A. Memorandum on crotonaldehyde aquatic ecological assessment Annette Nold to John Walker. U.S. Environmental Protection Agency. (April 5, 1988).

(5) NRC. National Research Council. "Formaldehyde and other aldehydes". Washington, DC. National Academy Press. (1981).

(6) Tennessee Eastman Company. Kingsport, TN 37662. Letter to Dr. Robert H. Brink, Interagency Testing Committee. (June 19, 1987).

(7) USDOC. U.S. Department of Commerce. "U.S. Imports for Consumption and General Imports." Washington, DC. U.S. Bureau of the Census. Publication No. FT246. p. 1–580. (1985).

(8) Eastman Kodak Company, Kingsport, TN 37662. Letter to Mr. John Schaeffer, Office of Pesticides and Toxic Substances, EPA. (August 16, 1988).

(9) Gadel, F., and Bruchet, A. "Application of pyrolosis-gas chromatography-mass spectrometry to the characterization of humic substances resulting from decay of aquatic plants in sediments and water." *Water Research* 21:1195–1206. (1987).

(10) Krotoszynski, B.K., and O'Neill, H.J. "Involuntary bioaccumulation of environmental pollutants in nonsmoking heterogeneous human populations." *Journal of Environmental Science and Health.* A17:855–883. (1982).

(11) Verschueran, K. *Handbook of Environmental Data on Organic Chemicals.* 2nd ed. New York, N.Y. Van Nostrand Reinhold Co. pp. 410–431. (1983).

(12) Miyamoto, Y. "Eye and respiratory irritants in jet engine exhaust." *Aviation, Space and Environmental Medicine.* 57:1104–1108. (1986).

(13) Lipari, F., Dash, J.M., and Scruggs, W.F. "Aldehyde emissions from wood-burning fireplaces." *Environmental Science and Technology.* 18(5):326–330. (1984).

(14) Dynamac Corporation, Rockville, MD 20852. *Crotonaldehyde.* IR-497. EPA Contract No. 68-02-4251. (June 15, 1988).

(15) Dawson, G.W., Jennings, A.L., Drozdowski, D., and Rider, E. "the acute toxicity of 47 industrial chemicals to fresh and saltwater fishes." *Journal of Hazardous Materials.* 1:303–318. (1977).

(16) Union Carbide, Danbury, CT 06817. Letter to U.S. Environmental Protection Agency. (May 2, 1986). 8D-878216446.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Other Regulatory Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the Consent Order under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 1,431 hours per response, including 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 Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Control No. 2070–0033), Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Testing procedures, Environmental protection, Hazardous substances, Chemicals, Chemical export, Recordkeeping and reporting requirements.

Dated: October 2, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding crotonaldehyde to the Table in CAS Number Order to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS number	Substance or mixture name	Testing	FEDERAL REGISTER Citation
4170-30-3.....	Crotonaldehyde.	Environmental effects.	November 9, 1989.
		Chemical fate.	November 9, 1989.

[FR Doc. 89-26445 Filed 11-8-89; 8:45 am]
BILLING CODE 6560-50

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 803

RIN 2900-AE32

VA Acquisition Regulation: Internal Management of the VA Acquisition System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to add implementing instructions for Procurement Integrity, section 6 of the Office of Federal Procurement Policy Act Amendments of 1988. VA contracting officers are authorized to designate persons to have access to proprietary and source selection information; certification by procurement officials who leave the Government will be accomplished as part of the out processing clearance process; guidance is provided for the conduct of investigations of possible violations of the Act; certifications by procurement officials regarding their familiarity with the Act will be filed in the VA's official Personnel Files; and organizations requesting contract action exceeding $25,000 are to provide lists of procurement officials. These regulations will effectively implement the requirements of the Procurement Integrity statute in the most efficient means possible, protecting the integrity of the procurement process and the interests of administrative efficiency.

EFFECTIVE DATE: November 23, 1989.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Acquisition Management Service (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, (202) 233-3054.

SUPPLEMENTARY INFORMATION:

I. Background

This regulation adds internal administrative implementation of the Procurement Integrity requirements of the Office of Federal Procurement Policy Act Amendments Act of 1988. One of the more administratively cumbersome aspects of the Act is determining the most efficient means of obtaining the required certifications of procurement officials and where best to file the certifications. This regulation requires that such certifications be included in the Official Personnel File (OPF) of the respective procurement official. Furthermore, when a procurement official leaves the Government, the required certification that he or she understands his or her continued obligation not to disclose proprietary or source selection information will be accomplished as part of the normal personnel clearance procedure. This process is considered more administratively efficient and less subject to errors of omission than the procedure prescribed in the FAR. Consequently, a class deviation to the FAR has been processed.

This regulation prescribes that organizations requesting contract services exceeding $25,000 provide the contracting officer a list of all procurement officials and certify that each identified procurement official has certified his or her understanding of the Act and that such a certification has been sent to their respective OPF.

Guidance is provided regarding the conduct of investigations of suspected violations of the Act and how to process the resulting findings.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this proposed rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

These changes are internal VA management policies and therefore public participation is unnecessary (38 CFR 1.12 and 5 U.S.C. 553(d)(3)). Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 803

Government procurement.

Approved: October 31, 1989.

Edward J. Derwinski,

Secretary.

PART 803—[AMENDED]

48 CFR chapter 8, Department of Veterans Affairs, is revised as set forth below:

1. The authority citation for Subpart 803.1 continues to read as follows:

Authority: 38 U.S.C. 310 and 40 U.S.C. 486(c).

2. In subpart 803.1, sections 803.104, 803.104-5, 803.104-9, 803.104-11, 803-104-12 are added to read as follows:

Subpart 803.1—Safeguards

* * * * *

803.104 Procurement integrity.

803.104-5 Disclosure of proprietary and source selection information.

(a) Contracting officers are authorized to designate persons or classes of persons to have access to proprietary and source selection information pertaining to procurements for which they are responsible. Individuals, or classes of individuals, who have been provided access for a specific procurement will be listed in the contract file.

(b) Contracting officers will only release source selection or proprietary information when access is necessary to the conduct of the procurement and only to procurement officials who have a need to know and who have verified that they have certified their familiarity with the Office of Federal Procurement Policy Act Amendments of 1988 in accordance with FAR 3.104-12. (Clerical personnel or other persons who may require access to proprietary information and who are not procurement officials must be included in the list identified in paragraph (a)). Furthermore, such persons must be informed of their obligation not to disclose such information, since the nondisclosure provision of the Procurement Integrity statute applies to nonprocurement officials as well.)