is defined as radioactive material that is permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold. Category 3 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 3 threshold but less than the Category 2 threshold. Category 1/10 of Category 3 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the 1/10 of Category 3 threshold but less than the Category 3 threshold.

Dated at Rockville, Maryland, this 7th day of April 2008.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–7756 Filed 4–10–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 820

RIN 1990–AA30

Procedural Rules for DOE Nuclear Activities

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its Procedural Rules for DOE Nuclear Activities to be consistent with section 610 of the Energy Policy Act of 2005, Public Law 109–58 (EPAct 2005), signed into law by President Bush on August 8, 2005. Section 610 amends provisions in section 234A. of the Atomic Energy Act of 1954 (AEA) concerning civil penalties with respect to certain DOE contractors, subcontractors and suppliers. This proposed rule would revise DOE's regulations to be consistent with the changes made by section 610.

DATES: Public comments on this proposed rule will be accepted until May 27, 2008.

ADDRESSES: You may submit comments, identified by RIN 1990–AA30, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: Martha.Thompson@hq.doe.gov.

Mail: Martha Thompson, Deputy Director, (HS–40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 20300 Century Blvd., Germantown, Maryland 20874.

You may obtain copies of comments received by DOE from the Office of Health, Safety and Security Web site: *http://www.hss.energy.gov/Enforce/* or by contacting Martha Thompson of the Office of Enforcement.

FOR FURTHER INFORMATION CONTACT: Sophia Angelini, Attorney-Advisor (GC–52), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6975; or Martha Thompson, Deputy Director (HS–40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 20300 Century Blvd., Germantown, Maryland 20874, (301) 903–5018 or by e-mail, *martha.thompson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Proposed Rule
III. Public Comment Procedures
IV. Regulatory Review

I. Background

In 1988, Congress amended the Atomic Energy Act of 1954 (AEA) (42 U.S.C. 2011 *et seq.*) by adding section 234A. (commonly referred to as the Price-Anderson Act) (42 U.S.C. 2282a.) that establishes a system of civil penalties for DOE contractors, subcontractors, and suppliers that are covered by an indemnification agreement under section 170d. of the AEA (42 U.S.C. 2210d.). The civil penalties cover DOE contractors, subcontractors and suppliers that violate, or whose employees violate, any applicable rule, regulation or order related to nuclear safety issued by the Secretary of Energy. Section 234A. specifically exempted seven institutions (and any subcontractors or suppliers thereto) from such civil penalties and directed the Secretary of Energy to determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty. On August 17, 1993, DOE promulgated ''Procedural Rules for DOE Nuclear Activities,'' codified at 10 CFR Part 820 (Part 820), to provide for the enforcement under section 234A. of the AEA of DOE nuclear safety requirements. Under Part 820, the exemption provision for the seven institutions is set forth in section 820.20(c); the provision for an automatic remission of civil penalties for ''nonprofit educational institutions'' is in section 820.20(d).

DOE is proposing to amend subpart B of Part 820 to incorporate the changes required by section 610 of EPAct 2005. Section 610, entitled ''Civil Penalties,'' amended section 234A. of the AEA by:

(1) Repealing the automatic remission of civil penalties by striking the last sentence of subsection 234A.b.(2) which reads: ''In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.'';

(2) Deleting exemptions provided to seven institutions (including their subcontractors and suppliers) for activities at certain facilities by deleting existing subsection 234A.d. and substituting a new subsection 234A.d.(1) in which the total amount of civil penalties for violations under subsection 234A.a. of the AEA by any not-for-profit contractor, subcontractor, or supplier may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract; and

(3) Adding a new section 234A.d.(2) that defines the term ''not-for-profit'' to mean that ''no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.''

Finally, section 610 of EPAct 2005 included an effective date provision at subsection 234A.c., specifying that the amendments as to civil penalties under section 234A. shall not apply to any violation of the AEA occurring under a contract entered into before the date of enactment of EPAct 2005, which was August 8, 2005.

II. Discussion of the Proposed Rule

Today's proposed rule would amend section 820.20 as follows:

(1) It would revise paragraph (c) to limit the exemption for seven institutions (and their subcontractors and suppliers) from the civil penalty provisions of Part 820 to violations occurring under contracts entered into before the date of enactment of EPAct 2005;

(2) It would revise paragraph (d) to limit the automatic remission of civil penalties for nonprofit educational institutions under Part 820 to violations

occurring under contracts entered into before the date of enactment of EPAct 2005;

(3) It would add a new paragraph (e) to provide that, with respect to any violation occurring under a contract entered into on or after the date of enactment of EPAct 2005, the total amount of civil penalties paid under Part 820 by any not-for-profit contractor, subcontractor, or supplier may not exceed the total amount of fees paid within the fiscal year in which the violation occurs; and

(4) It would add a new paragraph (f) to provide that a not-for-profit contractor, subcontractor, or supplier is one for which no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

To summarize, for contracts entered into with the DOE on or after August 8, 2005, all contractors, subcontractors and suppliers would be subject to civil penalties for violations of nuclear safety regulations; however, not-for-profit contractors, subcontractors and suppliers could not be assessed any such penalties greater than the total amount of fees paid to them within the fiscal year in which the violation occurs. For contracts entered into with DOE prior to August 8, 2005, the provisions of section 820.20 pertaining to the exemption from civil penalties for the seven institutions (including their subcontractors and suppliers) and the automatic remission of any civil penalties for nonprofit educational institutions would remain unchanged.

DOE's proposed amendments to section 820.20 are intended to effectuate section 610 of EPAct 2005. The following aspects of today's proposal are discussed to facilitate a better understanding of the proposed amendments and their implementation.

1. When a Contract Is ''Entered Into'' for Purposes of Section 820.20

In many cases, it is a simple matter to determine when a contract is entered into: this occurs when the contractor and the DOE contracting officer have both signed and executed the contract. Further, for purposes of section 820.20, DOE proposes to consider that contractual arrangements between the DOE contractor and its subcontractors and suppliers relate back to the date on which the contract was entered into between the prime contractor and DOE.

In some cases, however, a contract may include an option for renewal of the contract beyond the base period or DOE may decide to extend the contract, raising a question as to when the contract is ''entered into.'' In a case where a contract was competed with an option to renew, DOE proposes that, if it exercises its option, the contract retains the same ''entered into'' date as the initially competed contract for purposes of section 820.20. In a case where DOE decides to extend a contract pursuant to the applicable provisions of the Federal Acquisition Regulation and the Department of Energy Acquisition Regulation (such as a management and operating contract that does not contain a competitively awarded option clause), DOE proposes to consider the contract ''entered into'' as of the date of execution of the extended contract, not the initial contract, for purposes of section 820.20. Applying this definition of when a contract is ''entered into,'' the only institution of the seven institutions that is still exempted from civil penalties under section 234A. of the AEA is the University of California for operation of the Lawrence Berkeley National Laboratory. The University of California was awarded the contract to continue to operate the Lawrence Berkeley National Laboratory following a competition. The contract was entered into and performance of work under this new contract began on June 1, 2005.

2. What Subcontractors and Suppliers are Entitled to the Exemption From Civil Penalties

Prior to the passage of EPAct 2005, each of seven institutions ''and any subcontractors or suppliers thereto,'' even if they were for-profit subcontractors or suppliers, were exempted from civil penalties under section 234A.d. of the AEA. In contrast, amended section 234A.d.(1) provides a cap on civil penalties only ''in the case of any not-for-profit contractor, subcontractor, or supplier.'' In sum, under prior law any subcontractor or supplier entity associated with one of the seven institutions under contract to the Department was entitled to the exemption from civil penalties to the same extent as the institution for which it was a subcontractor or supplier. Under current law, each contractor, subcontractor, or supplier must itself qualify as a ''not-for-profit,'' as defined at section 234A.d.(2), in order to qualify for the limitation on civil penalties; the exemption from civil penalties continues to apply in the limited case of any subcontractor or supplier to one of the seven institutions (prime contractor) that currently is under a contract with DOE that was entered into before August 8, 2005.

DOE considers that contractual arrangements between a DOE contractor and its subcontractors and suppliers relate back to the date on which the contract was ''entered into'' between the prime contractor and DOE. To further clarify, there are at present three potential categories of subcontractors and suppliers with entitlement, or lack of entitlement, to the exemption from civil penalties under the new statutory scheme as described herein.

First, there are subcontractors and suppliers that retain the entitlement to the exemption from civil penalties for violations occurring under contracts with DOE entered into prior to August 8, 2005, because they were under subcontract with one of the seven institutions at section 234A.d.(1) through (7) of the AEA before August 8, 2005, and they remain under those same subcontracts. As noted above, there is only one of the seven institutions that has a contract with DOE that was entered into prior to August 8, 2005—the University of California for the operation of the Lawrence Berkeley National Laboratory. Accordingly, only subcontractors and suppliers of the University of California performing activities associated with the Lawrence Berkeley National Laboratory, even if they are for-profit entities, retain the entitlement to exemption from civil penalties while under this prime contract.

Second, there are cases where subcontractors and suppliers entered into their subcontracts with one of the seven institutions before August 8, 2005, and, although one of the seven institutions is no longer the prime contractor, the subcontractor or supplier is continuing the same work under the same subcontract. In this case, DOE does not consider the subcontractor or supplier to be entitled to the exemption from civil penalties, as they are no longer under contract with one of the seven institutions named at section 234A.d.(1) through (7) of the AEA.

The third category of subcontractors and suppliers are those that entered into subcontracts with a prime contractor to DOE on or after August 8, 2005. Those subcontractors and suppliers are not entitled to the exemption for civil penalties. They may be entitled to the cap or limitation on civil penalties under the new law if, and only if, they individually qualify as a ''not-for-profit'' institution as defined at section 234A.d.(2).

3. How DOE Would Determine the ''1-Year Period'' To Calculate the Limitation on Civil Penalties for Not-For-Profit Entities

Section 610 of EPAct 2005 provides that, for violations of nuclear safety requirements occurring under a contract

entered into on or after August 8, 2005, any civil penalty assessed against a not-for-profit contractor, subcontractor, or supplier must be capped at the total amount of fees paid within any 1-year period (as determined by the Secretary of Energy) under the contract under which the violation occurs. There are several ways in which DOE could determine what constitutes the relevant ''1-year period.'' This could be interpreted as the fees paid in the 1-year period from the date of contract award, or the fees paid during the calendar year, or the fees paid during the fiscal year. DOE proposes, consistent with other DOE regulations (e.g., 10 CFR 851.5 (d)), to interpret ''the total amount of fees paid within any 1-year period'' as the total amount of fees paid by DOE to the ''not-for-profit'' entity in the U.S. Government fiscal year (i.e., October 1 through September 30) during which the violation(s) occurs for which a civil penalty is assessed.

4. How DOE Would Determine the ''Total Amount of Fees Paid'' To Calculate the Limitation on Civil Penalties for Not-For-Profit Entities

There are different ways in which DOE could determine what constitutes the ''total amount of fees paid'' to a not-for-profit contractor within the 1-year period discussed in section 3. For example, the total fees paid under section 820.20(e) could be calculated exclusive of any civil penalties, reduction in fees, or subsequent adjustments to fee that might be imposed on the contractor under this or other regulations, such as those involving violations of DOE regulations relating to classified information security, codified at 10 CFR Part 824, or worker safety and health, codified at 10 CFR Part 851. Alternatively, the total fees paid could be calculated inclusive of any civil penalties, reduction in fees, or subsequent adjustments to fee, that might be imposed on the contractor under this or other regulations. In other words, DOE must determine whether the ''total amount of fees paid'' should reflect the fee the contractor earns in the 1-year period based on its performance of the contract work scope with or without any penalties, reductions in fee, or subsequent adjustments to fee.

Current DOE standard contract clauses that address fee reductions for non-compliance with applicable regulations (e.g., 48 CFR 952.204–76, ''Conditional payment of fee or profit—safeguarding restricted data and other classified information'' and 48 CFR 952.223–77, ''Conditional payment of fee or profit—protection of worker safety and health'') provide that ''[u]nder this clause, the total amount of fee or profit that is subject to reduction made in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(I) of this clause [the paragraph dealing with performance periods].'' In effect, reductions assessed against a contractor's fee are treated cumulatively so that the total fee reductions taken in a performance period do not exceed the amount of fee which the contractor has earned during that period. This provision ensures that the not-for-profit contractor never faces a situation in which a fee reduction could exceed the actual amount of fee that it ultimately receives in a performance period. Although civil penalties are not assessed under a contract provision, DOE believes that they are conceptually similar to fee reductions and that it is appropriate to treat them in the same manner.

A cumulative calculation is consistent with the intent of section 610 of EPAct 2005 to limit civil penalties to a not-for-profit entity to the amount it earned under the contract for the performance period, such that the assets of the not-for-profit are not affected or depleted beyond the fee that it earns under the contract. Consistent with this Congressional intent and other DOE regulations, the Department proposes to calculate the ''total amount of fees paid'' to a not-for-profit entity based on a cumulative calculation that takes into account any reductions in fee, civil penalties (including civil penalties under this regulation), or subsequent adjustment to fees paid. In the case of any subsequent adjustments to fee (i.e., any adjustments to fee that are taken after the fee has been paid), DOE would reassess the penalty amount consistent with the subsequent change in the fee paid. This reassessment would be necessary to ensure that the not-for-profit entity does not pay more in civil penalties than the fee paid in a 1-year performance period.

5. Repeal of the Automatic Remission of Civil Penalties

Section 610 of EPAct 2005 includes a provision, entitled ''Repeal of Automatic Remission,'' that eliminates from section 234A.b.(2) of the AEA the sentence that directed the Secretary to determine by rule whether nonprofit educational institutions should receive automatic remission of any civil monetary penalty for violations of DOE nuclear safety regulations. DOE interprets this amendment as repealing DOE's authority to grant an automatic remission of any civil penalty payments for ''nonprofit educational institutions'' considered ''nonprofit'' under the United States Internal Revenue Code. In addition to the title of section 610(a), (''Repeal of Automatic Remission''), the amendments to section 234A. reveal a clear intent to repeal DOE's authority to grant automatic remission of civil penalties under this section. Congress removed the exemption for the seven institutions and, thus, subjected all contractors (including their subcontractors and suppliers) to civil penalties, and capped the total amount of civil penalties paid by any ''not-for-profit'' contractor at the total amount of fees paid within a 1-year period. Because automatic remission of civil penalties would be inconsistent with this amended statutory scheme, DOE interprets the amendment striking the last sentence in section 234A.b.(2) of the AEA to be a repeal of DOE's authority to provide automatic remission of civil penalties under the statute. Accordingly, DOE proposes to revise section 820.20 to eliminate the provision for automatic remission of civil penalties for contracts entered into on or after August 8, 2005.

6. A ''Not-For-Profit'' Contractor Under the Section 610 of EPAct 2005 is not the Same as a ''Nonprofit Educational Institution''

Section 610 of EPAct 2005 amends section 234A.d. of the AEA to define ''not-for-profit'' to mean that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person. DOE proposes to adopt that definition in a new paragraph (f) of the amended section 820.20 for violations occurring under contracts entered into on or after August 8, 2005. DOE notes that the definition of a ''not-for-profit'' contractor in EPAct 2005 is different from the definition of ''nonprofit educational institutions'' in the current section 820.20(d) (i.e., any educational institution that is considered nonprofit under the United States Internal Revenue Code). Consequently, under today's proposed rule a contractor, subcontractor and supplier previously entitled to an automatic remission of civil penalties if qualified as a ''nonprofit educational institution'' under section 820.20(d) may or may not qualify as a ''not-for-profit'' contractor, subcontractor or supplier for purposes of the limitation on civil penalties provision under the proposed section 820.20(f).

III. Public Comment Procedures

Interested persons are invited to participate in this proceeding by submitting data, views, or arguments. Written comments should be submitted to the address, and in the form, indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

DOE has determined that this rulemaking does not raise the kinds of substantial issues or impacts that, pursuant to 42 U.S.C. 7191, would require DOE to provide an opportunity for oral presentation of views, data and arguments. Therefore, DOE has not scheduled a public hearing on these proposed amendments to Part 820.

IV. Regulatory Review

A. Executive Order 12866

This notice of proposed rulemaking has been determined to not be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this notice of proposed rulemaking was not subject to review by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule would amend DOE's Procedural Rules for DOE Nuclear Activities to incorporate statutory changes made by EPAct 2005. The proposed amendments to section 820.20 are changes required to conform DOE's regulations to the new statutory provisions. The changes affect the seven institutions named in AEA section 234A.d. prior to amendment, which are not small entities, and their subcontractors and suppliers, which may or may not be small entities. While the amended Part 820 would expose small entities that are subcontractors and suppliers to potential liability for civil penalties, DOE does not expect that a substantial number of these entities will violate a DOE nuclear safety requirement, a DOE Compliance Order, or a DOE nuclear safety program, plan, or other provision, resulting in the imposition of a civil penalty. On the basis of the foregoing, DOE certifies that today's proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

C. Paperwork Reduction Act

This proposed rule would not impose new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemaking that interprets or amends an existing rule or regulation without changing the environmental effect of the rule or regulation that is being amended. The proposed rule would amend DOE's regulations on civil penalties with respect to certain DOE contractors, subcontractors and suppliers in order to incorporate changes made to the AEA by section 610 of EPAct 2005. These proposed amendments are procedural and would not change the environmental effect of section 820.20. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Section 201 of title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, ''*other than to the extent that such regulations incorporate requirements specifically set forth in law*'' (2 U.S.C. 1531, emphasis added). Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year (2 U.S.C. 1532). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments (2 U.S.C. 1534).

This proposed rule merely incorporates requirements specifically set forth in section 610 of EPAct 2005 and, thus, is exempt from the requirement to assess the effects of a Federal regulatory action on State, local, and tribal governments (2 U.S.C. 1531).

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. While this proposed rule would apply to individuals who may be members of a family, the rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it

is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action has been determined to not be a significant regulatory action, and it would not have an adverse effect on the supply, distribution, or use of energy. Thus, today's action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this proposed rule.

List of Subjects in 10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

For the reasons stated in the preamble, DOE hereby proposes to amend Chapter III of title 10 of the Code of Federal Regulations as set forth below:

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

1. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

2. Section 820.20 is amended by revising paragraphs (c) and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 820.20 Purpose and scope.

* * * * *

(c) *Exemptions.* With respect to a violation occurring under a contract entered into before August 8, 2005, the following contractors, and subcontractors and suppliers to that prime contract only, are exempt from the assessment of civil penalties under this subpart with respect to the activities specified below:

(1) The University of Chicago for activities associated with Argonne National Laboratory;

(2) The University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratories;

(4) University Research Association, Inc. for activities associated with FERMI National Laboratory;

(5) Princeton University for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

(d) *Nonprofit educational institutions.* With respect to a violation occurring under a contract entered into before August 8, 2005, any educational institution that is considered nonprofit under the United States Internal Revenue Code shall receive automatic

remission of any civil penalty assessed under this part.

(e) *Limitation for not-for-profits.* With respect to any violation occurring under a contract entered into on or after August 8, 2005, in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under this part may not exceed the total amount of fees paid by DOE to that entity within the U.S. Government fiscal year in which the violation occurs.

(f) *Not-for-profit.* For purposes of this part, a ''not-for-profit'' contractor, subcontractor, or supplier is one for which no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

[FR Doc. E8–7763 Filed 4–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0426; Directorate Identifier 2008–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; MORAVAN a.s. Model Z–143L Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Vortex inserts are used inside the heat exchanger of the carburettor heating system. Up to serial number (s/n) 0044 inclusive those inserts have been produced from aluminium alloy which has been found to be susceptible of cracks. As a consequence, if left uncorrected some loose parts could migrate in the induction system, reduce the air flow through the carburettor's venturi and lead to a loss of engine power.
>
> From s/n 0045 onwards vortex inserts have been produced from stainless steel.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 12, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0426; Directorate Identifier 2008–CE–016–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2008–0038, dated February 27, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Vortex inserts are used inside the heat exchanger of the carburettor heating system. Up to serial number (s/n) 0044 inclusive those inserts have been produced from aluminium alloy which has been found to be susceptible of cracks. As a consequence, if left uncorrected some loose parts could migrate in the induction system, reduce the air flow through the carburettor's venturi and lead to a loss of engine power.
>
> From s/n 0045 onwards vortex inserts have been produced from stainless steel.
>
> To address this unsafe condition, this Airworthiness Directive (AD) mandates initial inspections of the heat exchanger vortex inserts and replacement of the aluminium inserts by stainless steel ones if any damage is found; and recurrent inspections to be done as incorporated in the Revision of Airplane Maintenance Manual.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Moravan Aviation s.r.o. has issued Mandatory Service Bulletin Z143L/31a, dated June 8, 2007, and new pages 01–35, 05–28, 75–7, 75–7A, 75–7B, and 75–8 of ZLIN Z 143 L Airplane Maintenance Manual, Revision No. 9, dated: June 8, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information