

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 0**

[DA 95-1053]

**General Information****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission is modifying a section of the Commission's Rules that implements the Freedom of Information Act (FOIA) fee schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and § 0.460(e) or § 0.461 of the Commission's rules, unless such fees are restricted or waived in accordance with § 0.470. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

**EFFECTIVE DATE:** July 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Judy Boley, Freedom of Information Act Officer, Records Management Branch, Room 234, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 418-0210.

**SUPPLEMENTARY INFORMATION:** The FCC is modifying 47 CFR 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the Freedom of Information (FOIA). The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effective January 1995. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

**Regulatory Procedures**

This proposed rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant rule" since it will not have

an annual effect on the economy of \$100 million or more.

In addition, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 47 CFR Part 0**

Freedom of information.

Federal Communications Commission.

**Richard D. Lee,***Deputy Managing Director.***Amendatory Text**

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for Part 0 continues to read as follows:

**Authority:** 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.467 is amended by revising the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

**§ 0.467 Search and review fees.**

(a)(1) \* \* \*

Grade	Hourly fee
GS-1 .....	8.27
GS-2 .....	9.01
GS-3 .....	10.15
GS-4 .....	11.40
GS-5 .....	12.76
GS-6 .....	14.21
GS-7 .....	15.79
GS-8 .....	17.49
GS-9 .....	19.33
GS-10 .....	21.28
GS-11 .....	23.37
GS-12 .....	28.01
GS-13 .....	33.32
GS-14 .....	39.36
GS-15 .....	46.31

**Note:** These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 1995 and include 19 percent for personnel benefits.

\* \* \* \* \*

[FR Doc. 95-13875 Filed 6-6-95; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF ENERGY****48 CFR Parts 915, 931, 942, 951, 952, and 970**

RIN 1991-AB12

**Independent Research and Development and Bid and Proposal Costs Policy****AGENCY:** Department of Energy.**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) amends its Acquisition Regulation to effect changes to Independent Research and Development (IR&D) and Bid and Proposal Costs (B&P); and reflect Federal Acquisition Regulation (FAR) changes to the Cost Accounting Standards (CAS). Additionally, there are technical changes updating references, correcting editorial errors, and clarifying language.

**EFFECTIVE DATE:** June 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Terrence D. Sheppard (202) 586-8174, Business and Financial Policy Division (HR-51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C., 20585.

**SUPPLEMENTARY INFORMATION:****I. Background****II. Procedural Requirements**

A. Review Under Executive Order 12866

B. Review Under Executive Order 12778

C. Review Under the Regulatory Flexibility Act

D. Review Under the Paperwork Reduction Act

E. Review Under the National Environmental Policy Act

F. Review Under Executive Order 12612

**I. Background**

DOE published a notice of proposed rulemaking in the **Federal Register** on October 31, 1994. The public comment period closed December 30, 1994. No public comments were received. However, those portions of the proposed rule which addressed reimbursement of contractor travel costs (sections 970.3102-17(c)(7), 970.5204-13(e)(35), and 970.5204-14(e)(33)) have been withdrawn from this final rule, because section 2191 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, repealed the statutory basis for the policy. A detailed list of changes follows:

1. The authority citation for Parts 915, 931, 942, 951, and 952 is restated.

2. Subsection 915.805-5 is amended to delete the requirement in paragraph (c)(1) that a copy of the audit request be sent to the DOE Inspector General (IG). Pursuant to interagency agreements, the

DOE contract audit agency is the Defense Contract Audit Agency (DCAA); the Department of Health and Human Services (HHS) has audit cognizance for most educational institutions.

3. Subparagraph 915.970-8(d)(1) is revised to add a reference to the relocation of the CAS to FAR Appendix B (Federal Acquisition Circular (FAC) 90-12, August 31, 1992).

4. Subsection 931.205-18 is revised to add the acronyms "IR&D" and "B&P" to the title. The DEAR reference to the FAR is changed from (c)(3) to (c)(2), because the FAR amendment (FAC 90-13, September 24, 1992) deleted FAR (c)(3). Paragraph (c)(4) is deleted in its entirety, except for a portion of the first sentence of (c)(4) which was moved to (c)(2). Also, FAC 90-13 replaced the requirement for separate advance agreements with temporary limits (for a 3-year period) on allowable IR&D/B&P costs. DOE has chosen not to institute the temporary limits, but rather to allow for full recovery, immediately. Thus, the text was amended to reflect the DOE policy that generally IR&D costs are allowable if reasonable, allocable, and they have a potential benefit or relationship to the DOE program. B&P costs are generally allowable if they are reasonable and allocable.

5. Section 942.003, paragraph (a) is revised to delete references to the Department of Defense (DOD) services; the services no longer have individual plant residencies. This revision reflects the current DOD structure for contract administration.

6. Section 942.101 is amended by deleting the reference to the Air Force Contract Management Division (AFCMD) and the DOE IG in paragraphs (a)(2) and (c), respectively. The AFCMD no longer exists and the Office of Procurement and Assistance Management now negotiates the interagency agreements with DCAA and HHS. Paragraph (a)(3) is redesignated as (a)(2) to accommodate the deletion of AFCMD.

7. Subsection 942.705-1 is revised at paragraph (a)(3) by deleting the statement that a listing of business units, for which DOE has final indirect cost rate negotiation responsibility, is published in the DOE Order System. The listing is no longer published in the DOE Order System. The revised paragraph (b)(1) clarifies the proscription that contractors shall neither be required nor directed to submit final indirect cost rate proposals to the auditor.

8. Subsection 942.705-3 is revised to correct the statement that negotiated rates are "centrally maintained" when,

in fact, they are only "distributed" by the Office of Policy.

9. Subsection 942.705-4 is revised to correct the statement that negotiated rates are maintained by the Office of Policy, when, in fact, they are only distributed by the Office.

10. Subsection 942.705-5 is revised to correct the statement that negotiated rates are maintained by the Office of Policy, when, in fact, they are only distributed by the Office.

11. Subpart 942.10 is removed as a result of concomitant changes to the IR&D/B&P advance agreements (see item 4, foregoing). There is no longer a requirement to negotiate advance agreements; thus, the coverage is removed in its entirety.

12. Subsection 942.7003-6 is revised to add the word "Administration" to the title of FAR Part 30, which was changed as a result of FAC 90-12, August 31, 1992. Additionally, the reference to Public Law 91-379, which established the CAS, is deleted due to the subsequent incorporation of the CAS in FAR Appendix B and their application to civilian agencies pursuant to Public Law 100-679.

13. Subsection 942.7004 is revised at paragraph (a) to incorporate the results of the interagency agreements between the Office of Procurement and Assistance Management and DCAA and HHS. References to the DOE IG are deleted. Paragraphs (b), (c), and (d) are deleted as they describe internal operating procedures that, in large part, are no longer valid.

14. Subsection 951.7000 is revised to delete the reference to outdated General Services Administration (GSA) Bulletin A-95. The reference to the Federal Property Management Regulations (FPMRs) is sufficient.

15. Subsection 951.7001 is revised to delete the reference to outdated GSA Bulletin A-95 in the introductory paragraph. Paragraphs (a), (b), and (c) are deleted as they duplicate information contained in clause 952.251-70.

16. Subsection 952.251-70 is amended to correct a referenced citation at paragraph (a) from "Property Management Regulation (FPMR), Temporary Regulation A-30" to "Travel Regulation (FTR), Part 301-15, Travel Management Programs."

17. The authority citation for Part 970 is restated.

18. Subsection 970.3001-1 is revised to reflect the relocation of the CAS, within the FAR, from Part 30 to Appendix B.

19. Subsection 970.3001-2 is revised to correct the cross reference from "970.3102-10" to "970.3102-3."

20. Subsection 970.3102-17 is amended by revising paragraph (c)(2)(i) and adding a new paragraph (c)(6). In (c)(2)(i), line 1, the letter "s" is deleted from the word "Regulations" to reflect the new title. New subparagraph (c)(6) is added to reflect changes in FAR 31.205-46, "Travel costs" as a result of FAC 90-7 which provided for downward adjustments to the maximum per diem rates when no lodging costs are incurred or on partial travel days.

21. Subsection 970.7104-33 is revised to reflect the relocation of the Cost Accounting Standards, within the FAR, from Part 30 to Appendix B.

## II. Procedural Requirements

### A. Review Under Executive Order 12866

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

### B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs agencies to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in Sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

### C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities,

and, therefore, no regulatory flexibility analysis has been prepared.

#### *D. Review Under the Paperwork Reduction Act*

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

#### *E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

#### *F. Review Under Executive Order 12612*

Executive Order 12612 (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule revises certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

#### **List of Subjects in 48 CFR Parts 915, 931, 942, 951, 952, and 970**

Government procurement.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

### **PART 915—CONTRACTING BY NEGOTIATION**

1. The authority citation for Parts 915, 931, 942, and 951 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 915.805-5 is amended by revising paragraph (c)(1) to read as set forth below:

#### **915.805-5 Field pricing support.**

\* \* \* \* \*

(c)(1) When an audit is required pursuant to 915.805-70, "Audit as an aid in proposal analysis," the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate interagency agreement has not been established, the need for audit assistance shall be coordinated with the Office of Policy, within the Headquarters procurement organization.

\* \* \* \* \*

3. Section 915.970-8(d) is amended by revising paragraph (d)(1) introductory text to read as set forth below:

#### **915.970-8 Weighted guidelines application considerations.**

\* \* \* \* \*

(d) *Capital investment (facilities).* (1) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Measurement of the amount of facilities capital employed is discussed in (FAR Appendix B) 48 CFR 9904.414. Five to twenty percent of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the negotiating official shall consider in evaluating this factor are:

\* \* \* \* \*

### **PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES**

4. Subsection 931.205-18 is revised to read as follows:

#### **931.205-18 Independent research and development (IR&D) and bid and proposal (B&P) costs.**

(c)(2) IR&D costs are recoverable under DOE contracts to the extent they are reasonable, allocable, not otherwise unallowable, and have potential benefit or relationship to the DOE program. The

term "DOE program" encompasses the DOE total mission and its objectives. B&P costs are recoverable under DOE contracts to the extent they are reasonable, allocable, and not otherwise unallowable.

### **PART 942—CONTRACT ADMINISTRATION**

5. Section 942.003 is amended by revising paragraph (a) as set forth below:

#### **942.003 Organizational structure.**

(a) The Department of Defense has initiated a formal system of independent organizations responsible for performance of post-award management functions. A field structure of Contract Administration Offices (CAO) responsible for contract management and administration of contracts for major defense contractors has been established. DOD has organized plant residencies of contract management specialists for specific DOD contractors and their various business units. The Defense Logistics Agency performs contract management functions both at onsite residencies of contractors and on a mobile basis from centrally located management areas for other defense contractors. A complete listing of the DOD contract administration service components is contained in the Defense Directory cited in (FAR) 48 CFR 42.102.

\* \* \* \* \*

6. Section 942.101 is amended by removing paragraph (a)(2); redesignating paragraph (a)(3) as (a)(2); and revising paragraph (c) to read as follows:

#### **942.101 Policy.**

\* \* \* \* \*

(c) The Department of Energy has executed memoranda of understanding with the Defense Contract Audit Agency and the Office of Audit of the Department of Health and Human Services to provide audit support service to the DOE in support of its procurement mission. Procedures for acquiring these services are discussed in 942.70.

7. Subsection 942.705-1 is revised to read as follows:

#### **942.705-1 Contracting officer determination procedure.**

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A listing of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b)(1) Pursuant to (FAR) 48 CFR 52.216-7, Allowable Cost and Payment,

contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered periods to the cognizant contracting officers responsible for negotiating their final indirect rates. The DOE negotiating official shall request all needed audit service in accordance with the procedures in 942.70, Audit Services.

8. Subsection 942.705-3 is revised to read as follows:

**942.705-3 Educational institutions.**

(a)(2) The negotiated rates established for the institutions cited in OMB Circular No. A-88 are distributed, to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor, by the Office of Policy, within the Headquarters procurement organization.

9. Subsection 942.705-4 is revised to read as follows:

**942.705-4 State and local governments.**

A list of cognizant agencies for State/local government organizations is periodically published in the **Federal Register** by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities are distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

10. Subsection 942.705-5 is revised to read as follows:

**942.705-5 Nonprofit organizations other than educational and state and local governments.**

OMB Circular A-122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus Federal financial assistance dollars) will be designated as the cognizant agency. There is no published listing of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

**Subpart 942.10 [Removed]**

11. Subpart 942.10 (including 942.1004 and 942.1008) is removed.

12. Subsection 942.7003-6 is revised to read as follows:

**942.7003-6 CAS disclosure statements.**

The audit activity is available and, in accordance with (FAR) 48 CFR part 30, Cost Accounting Standards Administration, is responsible for

making recommendations to the contracting officer as to whether the CAS disclosure statement, submitted by the contractor as a condition of the contract, adequately describes the actual or proposed cost accounting practices and is in compliance with the Cost Accounting Standards required under the terms of the contract. The contracting officer shall request the auditor to review all Disclosure Statements submitted by a contractor or potential contractor.

13. Section 942.7004 is revised to read as follows:

**942.7004 Procedures.**

The Department of Energy Headquarters procurement organization has established formal interagency arrangements with the Defense Contract Audit Agency (DCAA) and the Department of Health and Human Services, Office of Inspector General. Audits are available to contracting officers pursuant to terms of these arrangements. DCAA, as the DOE cognizant auditor, is responsible for performing audits, when requested, for all DOE prime contractors and DOE Management and Operating contractors' subcontractors, except where another agency has cognizance of a contractor. HHS, for example, has contract audit cognizance for most educational institutions.

**PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS**

14. Section 951.7000 is revised to read as follows:

**951.7000 Scope of subpart.**

The General Services Administration (GSA) and, in some cases, the Department of Defense (DOD) Military Traffic Management Command negotiate agreements with commercial organizations to provide certain discounts to contractors traveling under Government cost-reimbursable contracts. In the case of discount air fares and hotel/motel room rates, the GSA has established agreements with certain airlines and thousands of hotels/motels to extend discounts which were previously only available to Federal employees on official travel status. DOD has negotiated agreements with car rental companies for special rates with unlimited mileage which were also to be used by only Federal employees on official Government business. GSA Federal Property Management Regulations (FPMRs) make these three travel discounts available to Government cost-reimbursable contractors at the option of the vendor.

15. Section 951.7001 is revised to read as follows:

**§ 951.7001 General policy.**

Contracting officers will encourage DOE cost-reimbursable contractors (CRCs) to use Government travel discounts to the maximum extent practicable in accordance with contractual terms and conditions. Vendors providing the service may require that Government contractor employees furnish a letter of identification signed by the authorizing contracting officer. Contracting officers shall provide CRCs with a "Standard Letter of Identification" when appropriate to do so. An example of a "Standard Letter of Identification" is at 952.251-70(e).

**PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

16. The authority citation for part 952 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

16a. Subsection 952.251-70 is amended by revising paragraph (a) of the clause to read as follows:

**952.251-70 Contractor employee travel discounts.**

\* \* \* \* \*

(a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301-15, Travel Management Programs. It stipulates that cost-reimbursable contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.

\* \* \* \* \*

**PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

17. The authority citation for part 970 continues to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

18. Subsection 970.3001-1 is revised to read as follows:

**970.3001-1 Applicability.**

The provisions of (FAR) 48 CFR part 30 and (FAR Appendix B) 48 CFR 9904.414 shall be followed for management and operating contracts.

19. Subsection 970.3001-2 is revised to read as follows:

**970.3001-2 Limitations.**

Cost of money as an element of the cost of facilities capital (CAS 414) and as an element of the cost of capital assets under construction (CAS 417) is not recognized as an allowable cost under contracts subject to 48 CFR part 970 (See 970.3102-3).

20. Subsection 970.3102-17 is amended by revising paragraph (c)(2)(i) and by adding paragraph (c)(6) to read as follows:

**970.3102-17 Travel costs.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Federal Travel Regulation prescribed by the General Services Administration, for travel in the conterminous 48 United States.

\* \* \* \* \*

(6)(i) The maximum per diem rates referenced in paragraph (c)(2) of this section generally would not constitute a reasonable daily charge:

(A) When no lodging costs are incurred; and/or

(B) On partial travel days (e.g., same day of departure and return).

(ii) Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated pursuant to the Federal Travel Regulation, Joint Travel Regulations, or Standardized Regulations, they must result in a reasonable charge.

21. Subsection 970.7104-33 is revised to read as follows:

**970.7104-33 Cost Accounting Standards.**

The provisions of (FAR) 48 CFR 30 and (FAR Appendix B) 48 CFR 9904.414 shall apply to purchases by management and operating contractors.

[FR Doc. 95-13436 Filed 6-6-95; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. 1-21, Notice 13]

RIN 2127-AE99

**Federal Motor Vehicle Safety Standards Theft Protection**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This rule makes a temporary change in the requirement of Standard No. 114, *Theft Prevention*, that vehicles with automatic transmissions be equipped with a transmission lock that prevents key removal unless the transmission is locked in park or becomes locked in park as a direct result of removing the key. The purpose of this requirement is to prevent rollaway crashes caused by unattended children pulling the transmission lever out of park. Due to apparent confusion concerning the scope of the requirement and the effect of that confusion on transmission designs, the requirement will be changed until September 1, 1996. Until that time, the transmission lock will only be required to prevent key removal when the transmission is fully engaged in a detent position other than park (e.g., reverse, neutral, drive). After that date, the requirements will revert to their previous form, prohibiting key removal in all positions other than park.

This rule also corrects, by technical amendment, an error in the language of the provision that permits transmission lock override devices to facilitate towing disabled vehicles. The existing language inadvertently requires steering lock-up even for vehicles whose override devices are operated by the vehicle key. Requiring steering column lock-up on automatic transmission locks with a key operated override device would not provide added protection against theft since the key that would operate the device would also unlock the steering. The technical amendment excludes these vehicles from the steering lock-up requirement.

**DATES:** This rule is effective July 7, 1995. Petitions for reconsideration of this rule must be received no later than July 7, 1995.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and notice number and be submitted in writing to: Administrator, National

Highway Traffic Safety Administration, Room 5220, 400 Seventh Street, SW., Washington DC, 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM-15, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5276.

**SUPPLEMENTARY INFORMATION:**

**The Mazda Petition**

*Background*

On May 30, 1990, NHTSA amended Federal Motor Vehicle Safety Standard No. 114, *Theft Protection*, to protect against injuries to children caused by the rollaway of unattended automatic transmission vehicles in which children were able to shift the transmission. 55 FR 21868. The amendment required automatic transmission vehicles with a "park" position to have a key-locking system that prevents removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. The amendment was intended to ensure that the automatic transmissions of unattended parked vehicles cannot be shifted by a child. The amendment became effective on September 1, 1992.

On June 21, 1990, NHTSA denied a petition for rulemaking from Mr. W. A. Barr. Mr. Barr had requested that the agency amend the standard to require manufacturers to design transmissions that assure that the parking pawl (a "tooth" that fits into a transmission gear to prevent it from turning) engages when the driver puts the shift lever in park. He believed that transmission designs of Ford and other manufacturers generate a "back pressure" on the shift lever that pushes the lever out of park and toward reverse. To counter that force, the driver has to pull the shift lever "sideways" into a slot to assure that the lever does not spontaneously move out of park and into reverse. Mr. Barr considered these designs defective because they place the responsibility for assuring that the shift lever is "locked" in park on the driver. He referred to the situation in which the driver does not properly place the shift lever in park as "mispositioning."

In its denial of Mr. Barr's petition, NHTSA stated "[w]ithout data suggesting current Federal motor vehicle safety standards are allowing or not addressing an unreasonable safety risk, the agency will not commence [rulemaking]." The agency also stated "the agency's review of available data on incidents of inadvertent vehicle movement indicated that the potential for this problem is relatively small." In