

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental checklist and categorical exclusion determination are available where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T13–123, to read as follows:

§ 165.T13–123 Safety Zone; Chimes and Lights Fireworks Display, Port Orchard, WA.

(a) *Safety Zone.* The following area is designated a safety zone: Port Orchard Bay, WA

(i) Location. All waters of Sinclair Inlet extending out to a 500' radius from the fireworks launch site located north of the town of Port Orchard at Radar Site "C" at 47°32'45" N, 122°38'02" W (NAD 1983).

(ii) Effective time and date. 5 p.m. to 8 p.m. on December 5, 2009.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or Designated Representative.

(c) *Enforcement Period.* This section is effective from 5 p.m. to 8 p.m. on December 5, 2009. If the need for the termination of the safety zone occurs before the scheduled termination time, the Captain of the Port will cease enforcement of this section and will announce that fact via Broadcast Notice to Mariners.

Dated: November 13, 2009.

Suzanne E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E9-29124 Filed 12-7-09; 8:45 am]

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**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 300

[EPA-HQ-SFUND-1990-0011; FRL-9089-8]

**National Oil and Hazardous Substance
Pollution Contingency Plan; National
Priorities List**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Notice of Deletion of the Kerr-McGee (Reed-Keppler Park) (RKP) Superfund Site from the National Priorities List.

SUMMARY: EPA, Region 5 is publishing a direct final Notice of Deletion of the

Kerr-McGee Reed-Keppler Park Superfund Site (Site), located in West Chicago, Illinois, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Illinois, through the Illinois Environmental Protection Agency (IEPA), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective February 8, 2010 unless EPA receives adverse comments by January 7, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1990-0011, by one of the following methods:

- **E-mail:** Timothy Fischer, Remedial Project Manager, at timothy.fischer@epa.gov or Janet Pope, Community Involvement Coordinator, at pope.janet@epa.gov.

- *Fax:* Gladys Beard at (312) 886-4071.

- *Mail:* Timothy Fischer, Remedial Project Manager, U.S. Environmental Protection Agency (SR-6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-5787, or Janet Pope, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI-7J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-0628 or 1-800-621-8431.

- *Hand delivery:* Janet Pope, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI-7J), 77 West Jackson Blvd., Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8:30 a.m. to 4:30 p.m.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-1990-0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/epaosopr/pic/nr/>

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at:

U.S. Environmental Protection Agency—Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, Hours: Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.
West Chicago Public Library, 118 W. Washington St., West Chicago, IL 60185, Phone: (630) 231-1552, Hours: Monday through Thursday, 9 a.m. to 9 p.m.; Friday and Saturday, 9 a.m. to 5 p.m.; and Sundays until May, 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Timothy Fischer, Remedial Project Manager, U.S. Environmental Protection Agency (SR-6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-4737, fischer.timothy@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
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- V. Deletion Action

I. Introduction

EPA Region 5 is publishing this direct final Notice of Deletion of the Kerr-McGee Reed-Keppler Park (RKP) Superfund Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to Section 105 of the CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective February 8, 2010 unless EPA receives adverse comments by January 7, 2010. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the RKP Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR

300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Illinois prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the Illinois Environmental Protection Agency, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, The Daily Herald. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

Early site investigations at the RKP Site found elevated levels of radioactive thorium in site soils. A removal action was conducted at the RKP Site, and a Final Report for the RKP Site removal action was submitted and approved by EPA in April 2002. This report documented that all cleanup criteria for soils at the RKP Site had been successfully achieved.

In September 2002, EPA issued a Record of Decision (ROD) for the RKP Site which called for No Further Action, along with associated groundwater monitoring for total uranium at the site.

A five-year review was completed on August 13, 2007, and the review concluded that the site remedy was protective of human health and the environment.

On January 28, 2008, EPA agreed that the remedial objective for uranium in groundwater had been achieved, based upon five groundwater sampling events between June 2006 and December 2007. On March 18, 2008, the responsible parties completed abandonment of all site monitoring wells. The Site has now achieved all remedial objectives.

Site Location

The Kerr-McGee Reed-Keppler Park Site is a 100-acre community park located in the northwestern portion of West Chicago, DuPage County, Illinois, about 30 miles west of Chicago, Illinois. The Kerr-McGee Reed-Keppler Park Site is located north of National Street and west of Arbor Avenue. The majority of the Kerr-McGee Reed-Keppler Park Site

is owned by the City of West Chicago, and is leased to and operated by the West Chicago Park District (Park District) for use as a public recreation area. The park is used for a variety of activities including tennis, volleyball, soccer, and baseball/softball. The land use within one mile of the site is primarily residential. The Park District's Family Aquatic Center is also located in the northeast section of the Reed-Keppler Park.

Site History

In the early 1900's, the RKP Site was mined as a quarry to provide rock and embankment material for construction of the Chicago, Wheaton and Western Railway (now the Illinois Prairie Path embankment owned by Commonwealth Edison). This old quarry area was left as a topographic low area and was subsequently used for solid waste (household and commercial garbage) disposal from as early as 1939 until 1973. Among the solid wastes found at the RKP Site were thorium mill tailings and other process wastes generated at the West Chicago Rare Earths Facility (REF), operated in West Chicago by Lindsay Light and Chemical Company, and its successors, from 1934 until 1973. In 1967, Kerr-McGee Chemical Corporation purchased the REF and maintained operations until the facility was closed in 1973.

Several site investigations were conducted, and in 1996, EPA determined that the level of contamination in the surface soils at the RKP Site warranted a time-critical removal action and that removal decision was documented in an Action Memorandum. The Action Memorandum reported that the median level of soil contamination, based upon soil samples collected at the RKP Site, was 286 picoCuries per gram (pCi/g) of total radium, with the maximum exceeding 15,000 pCi/g. The Action Memorandum concluded that contaminated soil should be removed until a cleanup criterion of 5 pCi/g of total radium (radium-226 + radium-228) over background was achieved. The background concentration for the RKP Site was determined to be 2.2 pCi/g, thereby establishing the cleanup criterion for the RKP Site at 7.2 pCi/g. The Action Memorandum, along with an Action Criteria Document that explained the radiation cleanup level, formed the basis for EPA's Unilateral Administrative Order (UAO), which was issued to Kerr-McGee Chemical Corporation and the City of West Chicago, Illinois, requiring removal activities at the RKP Site to address the

radioactive contamination and protect human health and the environment.

A total of 114,652 loose cubic yards of contaminated soil and debris were removed from the RKP Site between April 1997 and October 1999. The contaminated material was then shipped to the REF to be physically separated. All contaminated material was then shipped to a Nuclear Regulatory Commission (NRC) licensed disposal Site in Utah by rail. Final restoration activities for the RKP Site were completed in November 2000. A Final Report for the RKP removal action was submitted to EPA in April 2002, which confirmed that the removal action met all of the requirements and cleanup criteria specified in the Action Memorandum and the Action Criterion Document for the RKP Site.

Remedial Investigation and Feasibility Study (RI/FS)

After the completion of the soil removal action at RKP, EPA determined that all action necessary to protect human health and the environment had been taken with respect to the soils at the RKP Site. Due to an exceedance of the drinking water standard for uranium in one monitoring well at the site, EPA required monitoring of nine wells at the site. The EPA monitored these wells until sufficient data was collected to insure that all groundwater concentrations were decreasing and that the drinking water standard for uranium had been attained in all the site wells.

Groundwater data were collected in 1994 and 1997 at the RKP Site as part of investigation efforts at the site. Concentrations of total dissolved uranium, elevated above background, were detected in wells 4 and 5 in October 1994. Wells 1, 2, 3, 4, and 5 were subsequently abandoned or removed from the site during excavation of contaminated soil.

Kerr-McGee installed five new monitoring wells (1–5) at the RKP Site in November 1997. Monitoring wells 7–9 were also subsequently installed to replace some of the original Site wells that had been removed as part of site excavation activities.

In August 2001, additional groundwater samples were collected from the nine RKP monitoring wells to determine if residual groundwater contamination levels achieved the remedial objective following completion of the removal action at the RKP Site. One well (RKP-5) exhibited concentrations of total uranium in exceedance of the drinking water standard for total uranium in 40 CFR 141. This standard, also known as the Maximum Contaminant Level (MCL), is

30 micrograms per liter ($\mu\text{g/L}$) for total uranium. This corresponds to a radioactivity level of about 27 picoCuries per liter (pCi/L). The concentration of uranium in RKP-5 in August 2001 was 37.1 pCi/L . All of the other RKP monitoring wells were in compliance with the MCL.

EPA cleanups conducted under CERCLA are legally required to comply with all Applicable or Relevant and Appropriate Requirements (ARARs). The MCLs in the Safe Drinking Water Act are considered an ARAR for all CERCLA sites that overlie aquifers that are used, or may be reasonably anticipated to be used, as a drinking water source in the future. EPA promulgated the MCL for total uranium in 65 FR 76708, National Primary Drinking Water Regulations, on December 7, 2000. The State of Illinois has designated the groundwater aquifer underlying the RKP site and the City of West Chicago as Class I—Potential Potable Groundwater Resource in accordance with 35 Illinois Administrative Code (IAC) Part 620 Subpart B, Groundwater Classification for Class I Designation and IAC Part 620 Subpart D, State of Illinois Groundwater Quality Standards.

Due to the exceedance of the drinking water standard for uranium in monitoring well RKP-5, EPA required monitoring of the nine site wells until sufficient data was collected to insure that all groundwater concentrations were decreasing and that the drinking water standard for uranium in 40 CFR Part 141 (30 $\mu\text{g/L}$ or 27 pCi/L) had been attained in all site wells.

Record of Decision Findings

In September 2002, EPA issued a Record of Decision ROD for the RKP Site which selected No Further Action, along with associated groundwater monitoring for total uranium at the RKP Site. Due to the exceedance of the drinking water standard for uranium at monitoring well RKP-5, at the RKP Site, however, EPA required monitoring of the nine site wells until sufficient data was collected to insure that all groundwater concentrations were decreasing and that the drinking water standard for uranium in 40 CFR Part 141 (30 $\mu\text{g/L}$ or 27 pCi/L) had been attained in all site wells. When EPA issued the ROD, EPA did not expect that active treatment of the groundwater underlying the RKP Site would be required because:

(1) The removal action conducted from 1997 to 2000 by Kerr-McGee removed the source of uranium contamination (the radioactively contaminated subsurface soils below the

water table at RKP Site). Therefore, there was no continuing source of uranium in the subsurface soil to be released to groundwater and cause the concentrations in groundwater to increase.

(2) Only one of the nine wells at the RKP Site (RKP-5) exhibited groundwater contamination above the MCL drinking water standard for uranium (30 $\mu\text{g/L}$ or 27 pCi/L). Six of the nine RKP monitoring wells were located in areas that were considered downgradient from the former quarry and landfill areas at the site. RKP-5 was also sampled in January 1998 and the concentration of uranium in the well at that time was 7.43 pCi/L , which was below the MCL. RKP-5 was in compliance with the MCL when it was sampled in 1998 and the result in August 2001 was only marginally above the MCL. Consequently, there was a high probability that the 37.1 pCi/L result was an isolated sample result that would diminish within a reasonable time. In fact, beginning in December 1997, a total of 15 samples have been collected from the nine RKP groundwater wells, and the 37.1 pCi/L result from RKP-5 in August 2001 was the only exceedance of the MCL in the data set.

(3) Although EPA considered the shallow aquifer underlying and surrounding the area of the RKP site a potential drinking water source, the City of West Chicago prohibited the use of the groundwater by residents and required its residents to abandon groundwater wells in the City of West Chicago. In addition, the City of West Chicago obtained its drinking water from nine municipal wells, two of which were in the vicinity of the RKP Site. These wells are screened in a deep aquifer system, which is separated from the shallow aquifer by a Silurian dolomite and Maquoketa shale layer that inhibits the vertical flow of groundwater from the upper aquifer to the underlying formation. Therefore, it was extremely unlikely that contaminants in the upper aquifer could migrate to the draw down zones of the City wells. Shallow groundwater in the vicinity of the RKP Site is not used as a drinking water source. There were no known conduits between the shallow and deep aquifers, and no site related contaminants have been detected in any of the nine City wells above background concentrations. Consequently, there was no reason to believe that a complete pathway to human receptors existed, nor was one expected to form given the City of West Chicago's ordinance prohibiting the use of groundwater in the area.

Groundwater monitoring was conducted at the RKP Site from June 2006 until December 2007, when it was demonstrated that the MCL had been achieved, and maintained, for three consecutive sampling events. On January 28, 2008, EPA agreed that the remedial objective for uranium in groundwater had been achieved and that monitoring well abandonment could take place at the RKP Site. On March 18, 2008, Tronox (formerly Kerr-McGee) completed abandonment of all RKP Site wells.

Cleanup Goals

Groundwater monitoring was performed at the RKP Site five times between June 2006 and December 2007. The groundwater remedial objective was to monitor “to insure that future concentrations of uranium in the RKP Site groundwater meet the MCL drinking water standard of 30 $\mu\text{g/L}$, or 27 pCi/L . It was decided that monitoring would continue until it has been demonstrated that the MCLs have been achieved, and maintained, for three consecutive sampling events.” There were five sampling events conducted between June 2006 and December 2007 and none of the sample results exceeded the uranium concentration remedial goal of 30 $\mu\text{g/L}$. For this reason, EPA declared all response actions complete for the RKP Site. The monitoring wells were subsequently abandoned in March 2008, and there are no remaining physical remnants of the response action at the RKP Site left on site.

Operation and Maintenance

There are no remaining operation and maintenance requirements for the RKP Site. All response activities are complete and all physical remnants have been removed.

Five-Year Review

One five-year review was completed for the RKP Site on August 13, 2007. The five-year review concluded that the site remedy was protective of human health and the environment. The five-year review recommended that some maintenance be conducted on site monitoring wells if groundwater monitoring was to be conducted into the future. This recommendation was no longer a concern after the remedial objective for uranium in groundwater was achieved within one and a half years of the beginning of monitoring in 2006. All RKP monitoring wells have since been abandoned. No more five-year reviews will be conducted at the site.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion of this site from the NPL are available to the public in the information repositories and at www.regulations.gov.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Illinois, has determined that the responsible parties have implemented all response actions required, and no further response action by responsible parties is appropriate.

V. Deletion Action

EPA, with concurrence from State of Illinois through the Illinois Environmental Protection Agency, has determined that all appropriate response actions under CERCLA have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *February 8, 2010* unless EPA receives adverse comments by *January 7, 2010*. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 20, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing “Kerr-McGee (Reed Keppler Park)”, “West Chicago”, “IL”.

[FR Doc. E9–29081 Filed 12–7–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 802, 804, 808, 809, 810, 813, 815, 817, 819, 828, and 852

RIN 2900–AM92

VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document implements portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (the Act) and Executive Order 13360, providing opportunities for service-disabled veteran-owned small businesses (SDVOSB) to increase their federal contracting and subcontracting. The Act and the Executive Order authorize the Department of Veterans Affairs (VA) to establish special methods for contracting with SDVOSBs and veteran-owned small businesses (VOSB). Under this final rule, a VA contracting officer may restrict competition to contracting with SDVOSBs or VOSBs under certain conditions. Likewise, sole source contracts with SDVOSBs or VOSBs are permissible under certain conditions. This final rule implements these special acquisition methods as a change to the VA Acquisition Regulation (VAAR).

This document additionally amends SDVOSB/VOSB, Small Business Status Protests, where VA provided that VA would utilize the U.S. Small Business Administration (SBA) to consider and decide SDVOSB and VOSB status protests. This requires VA and SBA to execute an interagency agreement pursuant to the Economy Act. Negotiations of this interagency agreement have not yet been finalized. Therefore, VA has amended these regulations with an interim rule to

provide that VA's Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU) shall consider and decide SDVOSB and VOSB status protests, and provides procedures there for, until such time as the interagency agreement is executed by the agencies. VA hereby solicits comments on this regulatory amendment only.

DATES: January 7, 2010. *Comment date:* Comments on the amendments regarding section 819.307, only, must be received on or before January 7, 2010.

FOR FURTHER INFORMATION CONTACT:

Arita Tillman, Acquisition Policy Division (001AL–P1A), Office of Acquisition and Logistics, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 461–6859, or e-mail Arita.Tillman@va.gov.

SUPPLEMENTARY INFORMATION: On August 20, 2008, VA published in the *Federal Register* (73 FR 49141–49155) a proposed rule to revise the VAAR to implement portions of Public Law 109–461, the Veterans Benefits, Health Care and Information Technology Act of 2006, and Executive Order 13360, providing opportunities for SDVOSBs and VOSBs to increase their federal contracting and subcontracting. Comments were solicited concerning the proposal for 60 days, ending October 20, 2008. VA received 97 comments, many of which were groups of identical responses in form letters. Most commenters raised more than one issue. The issues raised in the comments are discussed below.

1. SDVOSB and VOSB Verification

Comment: Several comments were received regarding the validity of VA's Vendor Information Pages (VIP) database registration process, expressing concern for “pass through” business relationships and the potential for other fraudulent actions.

Response: The regulations governing the verification of VOSB status, which are in 38 CFR Part 74, are not the subject of this rulemaking. Accordingly, we will not make any changes based upon the comments. In the past, vendors could register themselves in the VA vendor database and self certify the accuracy of the information provided. However, section 502 of Public Law 109–461 requires VA to maintain a database of SDVOSBs and VOSBs and that VA verify that status. Section 74.2 sets out the eligibility requirements for VIP verification, and 38 CFR 74.3 sets out the criteria for a VOSB. Further, this final rule under section 802.101, Definitions, prescribes that SDVOSBs