

2. Are There Unique Costs and Benefits for Small Entities Subject to Section 2718 of the PHS Act?

a. What special consideration, if any, is needed for these health insurance issuers or plans?

b. What costs and benefits have issuers experienced in implementing requirements relating to minimum medical loss ratio standards, reporting and rebates under State insurance laws or otherwise?

3. Are There Additional Paperwork Burdens Related to Section 2718 of the PHS Act, and, if so, What Estimated Hours and Costs Are Associated With Those Additional Burdens?

Signed at Washington, DC this 6th day of April, 2010.

**Clarissa C. Potter,**

*Deputy Chief Counsel, (Technical), Internal Revenue Service, U.S. Department of the Treasury.*

Signed at Washington, DC this 7th day of April, 2010.

**Michael F. Mundaca,**

*Assistant Secretary, (Tax Policy), U.S. Department of the Treasury.*

Signed at Washington, DC this 7th day of April, 2010.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

Signed at Washington, DC this 8th day of April, 2010.

**Donald B. Moulds,**

*Acting Assistant Secretary for Planning and Evaluation, Office of the Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 655

**RIN 0702-AA58**

[Docket No. USA-2008-0001]

#### Radiation Sources on Army Land

**AGENCY:** Department of the Army, DoD.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Department of the Army proposes to revise its regulations concerning radiation sources on Army land. The Army requires Non-Army agencies (including their civilian contractors) to obtain an Army Radiation Permit (ARP) from the garrison commander to use, store or

possess ionizing radiation sources on an Army Installation. For the purpose of this proposed rule, "ionizing radiation source" means any source that, if held or owned by an Army organization, would require a specific Nuclear Regulatory Commission (NRC) license or Army Radiation Authorization (ARA). The purpose of the ARP is to protect the public, civilian employees and military personnel on an installation from potential exposure to radioactive sources. The U.S. Army Safety Office which is the proponent for the Army Radiation Safety Program is revising the regulation to reflect the Nuclear Regulatory Commission changes to licensing of Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM). Executive Order 12866 Regulatory Planning and Review and Executive Order 13422 Further Amendment to Executive Order 12866 on Regulatory Planning and Review were followed to rewrite this rule.

**DATES:** Consideration will be given to all comments received by June 14, 2010.

**ADDRESSES:** You may submit comments, identified by 32 CFR Part 655, Docket No. USA-2008-0001 and/or RIN 0702-AA58, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Tim Mikulski, (703) 601-2408.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On October 1, 2007, the Nuclear Regulatory Commission (NRC) issued a final rule which establishes requirements for the expanded definition of byproduct material. 72 FR 55864 (Oct. 1, 2007). The final regulation became effective on November 30, 2007. The NRC revised the definition of byproduct material in 10 CFR Parts 20, 30, 50, 72, 150, 170, and 171 to be consistent with section 651(e) of the Energy Policy Act of 2005.

The same revision to the definition of byproduct material was made in a separate rulemaking for 10 CFR Part 110 (April 20, 2006; 71 FR 20336). The Department of the Army is revising 32 CFR Part 655 to reflect the changes of the expanded definition of byproduct material that include Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM). Specifically, the current 32 CFR 655.10 paragraphs (a)(2), (3) and (4) have been removed, as the sources described in these sections will now be covered under 32 CFR 655.10(a)(1), which incorporates the expanded NRC definition of byproduct material (*see, e.g.,* 10 CFR 20.1003).

Additional changes in the rule include:

—Clarification that the use, storage, or possession of ionizing radiation sources must be in connection with an activity of the Department of Defense or in connection with a service to be performed on the installation for the benefit of the Department of Defense, in accordance with 10 U.S.C. 2692(b)(1).

—The use of ionizing radiation to differentiate between ionizing and nonionizing radioactive sources. Nonionizing radiation sources include lasers and radio frequency sources that are not covered by an ARP.

—The addition of an exemption of (1) non-Army entities using Army owned/licensed radioactive materials and (2) other Military Departments needing an ARP to bring radioactive sources on Army lands. The Radiation Safety Officer (RSO) must be notified prior to ionizing radiation sources being brought onto the installation.

—Clarification on when to file a NRC Form 241.

—The time the ARP is valid has been extended from three months to twelve months to reduce the need for reapplication.

—Consideration of host nation regulations was included for Outside the Continental United States (OCONUS) military installations.

—The land will be restored to the condition it was in prior to the effective date of the ARP.

##### B. Regulatory Flexibility Act

The Department has certified that the rule will not have a significant economic impact on a substantial number of small entities because the rule imposes no additional costs. However, since this is a proposed rule, the Department of the Army seeks comments from small entities that may be impacted by this proposed rule change.

### C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or Tribal governments in the aggregate, or the private sector, of \$100 million or more.

### D. National Environmental Policy Act

The Army has determined that this is not a major Federal action significantly affecting the human environment.

### E. Paperwork Reduction Act

Section 655.10(d) of this proposed rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

*Title:* Letter Permit for Non-Army Agency Radiation Sources on Army Land.

*Type of Request:* Reinstatement.

*Number of Respondents:* 235.

*Responses per Respondent:* 1.

*Annual Responses:* 235.

*Average Burden per Response:* 2 hours.

*Annual Burden Hours:* 470 hours.

*Needs and Uses:* Army radiation permits are required for use, storage, or possession of radiation sources by non-Army agencies (including their civilian contractors) on an Army installation.

The non-Army applicant will apply by letter, e-mail or facsimile with supporting documentation to the garrison commander through the appropriate tenant commander or garrison director.

The Army radiation permit application will specify the effective date and duration for the Army radiation permit and describe the purposes for which the Army radiation permit is being sought. The application will include identification of the trained operating personnel who will be responsible for implementation of the activities authorized by the permit and

a summary of their professional qualifications; the point-of-contact name and phone number for the application; the applicant's radiation safety Standing Operating Procedures (SOPs); storage provisions when the radiation source is not in use; and procedures for notifying the installation of reportable incidents/accidents.

*Affected Public:* Business or other for-profit entities; not-for-profit institutions; State, local or Tribal governments.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

Written comments and recommendations on the proposed information collection should be sent to the Office of Management and Budget, Desk Officer for the Department of Defense, Room 10235, New Executive Office Building, Washington, DC 20503, fax number: (202) 395-5167, with a copy to the Department of the Army, Army Safety Office, Chief of Staff DACS-SF, 2221 S. Clark Street, Room 1113, Arlington, VA 22202 Attn: Mr. Greg Komp, telephone (703) 601-2405. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write or e-mail the Department of the Army, Army Safety Office, Chief of Staff DACS-SF, 2221 S. Clark Street, Room 1113, Arlington, VA 22202 Attn: Mr. Greg Komp, telephone (703) 601-2405 or e-mail [Greg.Komp@us.army.mil](mailto:Greg.Komp@us.army.mil).

### F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed

rule does not impair private property rights.

### G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is a significant regulatory action. As such, the proposed rule was subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

### H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to section 2-202 of Executive Order 13045 this proposed rule is not a covered regulatory action to which Executive Order 13045 applies nor will this rule present environmental health risks or safety risks that will disproportionately affect children.

### I. Executive Order 13132 (Federalism)

The Department of the Army has determined that this proposed rule will not have a substantial 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.

**William T. Wolf,**

*Brigadier General, U.S. Army, Director of Army Staff Safety.*

### List of Subjects in 32 CFR Part 655

Environmental protection, Radiation protection.

For reasons stated in the preamble the Department of the Army proposes to revise 32 CFR Part 655 to read as follows:

### PART 655—RADIATION SOURCES ON ARMY LAND

*Authority:* 10 U.S.C. 3012.

#### § 655.10 Oversight of radiation sources brought on Army land by non-Army entities (AR 385-10).

(a) Army radiation permits are required for use, storage, or possession of ionizing radiation sources by non-Army agencies (including their civilian contractors) on an Army installation. Such use, storage, or possession of ionizing radiation sources must be in connection with an activity of the Department of Defense or in connection with a service to be performed on the installation for the benefit of the Department of Defense, in accordance with 10 U.S.C. 2692(b)(1). Approval by

the garrison commander is required to obtain an Army radiation permit. For the purposes of this section, an ionizing radiation source is:

(1) Radioactive material used, stored, or possessed under the authority of a specific license issued by the Nuclear Regulatory Commission (NRC) or an Agreement State (10 CFR Parts 30, 40, and 70 or Agreement State equivalent); or

(2) A machine-produced ionizing-radiation source capable of producing an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the ionizing radiation source or from any surface that the radiation penetrates.

(b) A permit is not required for Non-Army entities (including civilian contractors) that use Army licensed radioactive material on Army installations in coordination with the NRC licensee. The Non-Army entity must obtain permission from the Army NRC licensee to use the radioactive materials and be in compliance with all of the Army NRC license conditions prior to beginning work on Army land.

(c) Other Military Departments are exempt from the requirement of subsection (a) to obtain an Army radiation permit; however the garrison Radiation Safety Officer (RSO) must be notified prior to radioactive sources being brought onto the installation.

(d) Applicants will apply by letter with supporting documentation (subsection (e) of this section) to the garrison commander through the appropriate tenant commander or garrison director. Submit the letter so that the garrison commander receives the application at least 30 calendar days before the requested effective date of the permit.

(e) The Army radiation permit application will specify effective date and duration for the Army radiation permit and describe the purposes for which the Army radiation permit is being sought. The application will include: identification of the trained operating personnel who will be responsible for implementation of the activities authorized by the permit and a summary of their professional qualifications; the point-of-contact name and phone number for the application; the applicant's radiation safety Standing Operating Procedures (SOPs); storage provisions when the ionizing radiation source is not in use; and procedures for notifying the garrison of reportable incidents/accidents.

(f) The garrison commander will approve the application only if the

applicant provides evidence to show that one of the following is true:

(1) The applicant possesses a valid NRC license or Department of Energy (DOE) radiological work permit that allows the applicant to use the source in the manner specified in the Army radiation permit application;

(2) The applicant possesses a valid Agreement State license that allows the applicant to use radioactive material in the manner specified in the Army radiation permit application. An applicant operating in areas subject to exclusive Federal jurisdiction (Agreement States Letter SP-96-022) has to file a NRC Form-241, Report of Proposed Activities in Non-Agreement States, with the NRC in accordance with 10 CFR 150.20(b);

(3) For machine-produced ionizing radiation sources, the applicant has an appropriate State authorization that allows the applicant to use the source as specified in the Army radiation permit application and has in place a radiation safety program that complies with Army regulations; or

(4) For overseas installations, the applicant has an appropriate host-nation authorization as necessary that allows the applicant to use the source in the manner specified in the Army radiation permit application and has in place a radiation safety program that complies with applicable Army regulations and Host Nation regulations. Applicants will comply with applicable status-of-forces agreements (SOFAs) and other international agreements.

(g) All Army radiation permits will require applicants to remove all permitted sources from Army property prior to the expiration of the permit and restore all real or personal property of the Army that was modified, altered, or otherwise changed as a result of the applicant's activities to the condition such property was in prior to the effective date of the permit.

(h) An Army radiation permit issued under provisions of this section will be valid for no more than 12 months.

(i) Disposal of radioactive material (byproduct, source or special nuclear) by non-Army agencies on Army property is prohibited. However, the garrison commander may give written authorization for releases of radioactive material to the atmosphere or to the sanitary sewerage system that are in compliance with all applicable Federal, State, and local laws or regulations, including but not limited to, the NRC regulations at 10 CFR Part 20, Subpart K or Agreement State equivalent, and regulations issued by the Army or the Department of Defense, to include compliance with any applicable

requirement to obtain a permit, license, or other authorization, or to submit any information, notification, or report for such release.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0126]

RIN 1625-AA00

#### Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishment of safety zones for annual events in the Captain of the Port Detroit zone. This proposed rule adds events not previously published in Coast Guard regulations. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 14, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0126 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Lieutenant Commander Matt Merriman, Waterways Management Division, U.S. Coast Guard