

## Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Since the regulatory text proposed in this notice of proposed rulemaking is identical to that contained in the companion temporary rule published elsewhere in this issue of the **Federal Register**, the analyses contained in the preamble of the temporary rule concerning the Regulatory Flexibility Act, the Paperwork Reduction Act, and Executive Order 12866 also apply to this proposed rule.

### Drafting Information

Michael Hoover of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

### List of Subjects

#### 27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

#### 27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

#### 27 CFR Part 45

Administrative practice and procedure, Authority delegations (Government agencies), Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco

### Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, parts 40, 41, and 45 as follows:

#### PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

1. The authority citation for part 40 is revised to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. [The proposed amendatory instructions and the proposed amended regulatory text for part 40 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

#### PART 41—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

3. The authority citation for part 41 is revised to read as follows:

**Authority:** 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

4. [The proposed amendatory instructions and the proposed amended regulatory text for part 41 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

#### PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

5. The authority citation for part 45 is revised to read as follows:

**Authority:** 26 U.S.C. 5702–5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805; 44 U.S.C. 3504(h).

6. [The proposed amendatory instructions and the proposed amended regulatory text for part 45 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

Signed: August 23, 2009.

**John J. Manfreda,**  
Administrator.

Approved: September 4, 2009.

**Timothy E. Skud,**  
Deputy Assistant Secretary. (*Tax, Trade, and Tariff Policy*).

[FR Doc. E9–23173 Filed 9–23–09; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

#### RIN 2900–AM74

### Definition of Service in the Republic of Vietnam

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** In a document published in the **Federal Register** on April 16, 2008, the Department of Veterans Affairs (VA) proposed to amend its adjudication regulations regarding the definition of “service in the Republic of Vietnam.” This document withdraws that proposed rule.

**DATES:** The proposed rule published at 73 FR 20566 on April 16, 2008, is withdrawn as of *September 24, 2009*.

**FOR FURTHER INFORMATION CONTACT:** Nancy Copeland, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9685. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This rulemaking was initiated to respond to a decision rendered by the U. S. Court of Appeals for Veterans Claims (CAVC) in *Haas v. Nicholson*, 20 Vet. App. 257 (2006). While the comment period for the proposed rule was pending, the United States Court of Appeals for the Federal Circuit (Federal Circuit) decided *Haas v. Peake*, 525 F.3d 1168 (Fed. Cir. 2008). The Federal Circuit reversed and remanded the CAVC decision. The Federal Circuit found that VA’s requirement that a claimant had been present within the land borders of Vietnam at some point in the course of his/her duty constitutes a permissible interpretation of 38 U.S.C. 1116, and affirmed that the language used in its implementing regulation, 38 CFR 3.307(a)(6)(iii), may be interpreted as stating such an interpretation. A petition for a writ of certiorari by the U.S. Supreme Court was denied. *Haas v. Peake*, cert. denied, 129 S.Ct. 173 No. 08–525, 2009 WL 129302 (U.S. Jan. 21, 2009). There is no longer a need to revise § 3.307(a)(6)(iii), or the regulations that use identical language to define service in the Republic of Vietnam (38 CFR 3.814 and 3.815). Thus, VA is withdrawing the proposed rule.

Approved: August 26, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

[FR Doc. E9-23021 Filed 9-23-09; 8:45 am]

**BILLING CODE P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 51, 52, 261, 262, 264, 265, and 270**

[FRL-8961-2]

**RIN 2090-AA28**

#### **New Jersey Gold Track Program Under Project XL**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule: withdrawal.

**SUMMARY:** The Environmental Protection Agency (EPA) is withdrawing a proposed rule published on April 16, 2002, which would have modified the regulations under the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA) to enable the implementation of the New Jersey Department of Environmental Protection (NJDEP) Gold Track Program that was developed under EPA's Project eXcellence in Leadership (Project XL) program. Project XL was a national pilot program that allowed state and local governments, businesses and federal facilities to develop with EPA more cost-effective ways of achieving environmental and public health protection. In exchange, EPA provided regulatory, policy or procedural flexibilities to conduct the pilot experiments. EPA is withdrawing the proposed rule in response to NJDEP's decision not to go forward with the Gold Track Program and not to promulgate an enabling rule. In the rule, EPA proposed to provide New Jersey with authority to provide high-performing companies in New Jersey with the regulatory flexibility to test environmental management strategies designed to produce improved and measurable results. The NJDEP had expressed interest in testing a program designed to achieve environmental excellence through commitments and accountability beyond standard regulatory requirements. Following EPA's April 16, 2002 proposal, the NJDEP communicated to EPA that it did not wish to implement the state rulemaking or the pilot project as originally envisioned. EPA received no public comments on this proposed rule.

**DATES:** The proposed rule published on April 16, 2002 at 67 FR 18528 is withdrawn as of September 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gerald Filbin, Mail Code 1807T, U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Dr. Filbin's telephone number is (202) 566-2182 and his e-mail address is [filbin.gerald@epa.gov](mailto:filbin.gerald@epa.gov). Further information on today's action may also be obtained on the internet at <http://www.epa.gov/projectxl/njgold/index.htm>.

**SUPPLEMENTARY INFORMATION:** Regulatory Impact: Because this action withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or other Executive Orders and statutes that generally apply to those rulemakings.

The proposed rule, "New Jersey Gold Track Program Under Project XL," published on April 16, 2002 at 67 FR 18528 is withdrawn as of September 24, 2009.

Dated: September 16, 2009.

**Scott Fulton,**

*Acting Deputy Administrator.*

[FR Doc. E9-22924 Filed 9-23-09; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R05-OAR-2009-0664; FRL-8962-2]

#### **Approval and Promulgation of Air Quality Implementation Plans; The Chicago and Evansville Nonattainment Areas; Determination of Attainment of the Fine Particle Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Chicago (Illinois and Indiana) and Evansville (Indiana) areas have attained the 1997 fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). The proposed determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS for the 2006 to 2008 monitoring period. Preliminary data for 2009 suggest that the areas continue to monitor attainment. If these proposed

determinations are made final, the requirements for these areas to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) revisions related to attainment of the standard shall be suspended for so long as the areas continue to attain the 1997 PM<sub>2.5</sub> NAAQS.

**DATES:** Comments must be received on or before October 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0664 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax:* (312) 692-2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-0664. 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.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