

## Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

*Paragraph 6010(b) Alaskan VOR Federal Airways.*

\* \* \* \* \*

#### V-319 [Revised]

From Yakutat, AK, via Johnstone Point, AK, INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage, AK; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; to Nanwak, AK NDB.

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#### V-333 [Revised]

From Hooper Bay, AK; Nome, AK; to Shishmaref, AK.

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#### V-328 [Removed]

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#### V-480 [Revised]

From Mt. Moffett, AK, NDB, 20 AGL via St. Paul Island, AK, NDB, 20 AGL; Bethel, AK; McGrath, AK; Nenana, AK; to Fairbanks, AK.

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Issued in Washington, DC, on June 26, 2009.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E9–15694 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 742, 745, and 774

[Docket No. 090113021–9025–01]

RIN 0694–AE55

### Implementation of the 2008 Australia Group (AG) Intersessional Decisions; Additions to the List of States Parties to the Chemical Weapons Convention (CWC)

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the 2008 Australia Group (AG) intersessional decisions, which were recommended at the Intersessional Implementation Meeting held at The Hague on October 8–9, 2008, and adopted under the AG intersessional silent approval procedures in December 2008. This final rule amends the EAR to reflect changes to the AG “Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software” affecting valves and toxic gas monitoring systems. Consistent with these changes, this rule expands the EAR controls on valves to include those having contact surfaces lined with certain ceramic materials. In addition, this rule clarifies the types of dedicated detecting components that are subject to the EAR controls on toxic gas monitoring systems and expands these controls to include dedicated software for such systems.

This rule also amends the EAR to reflect changes to the AG “Control List of Dual-Use Biological Equipment and Related Technology and Software” affecting cross (tangential) flow filtration equipment. Consistent with these changes, the rule clarifies the EAR controls on such equipment to specifically identify equipment using disposable or single-use filtration components.

In addition, this rule amends the EAR to reflect changes to the AG “Guidelines for Transfers of Sensitive Chemical or Biological Items.” Consistent with these changes, the rule amends the AG-related software entries in the EAR to include references to several definitions that were recently added to the AG “Guidelines.”

Finally, this rule amends the list of countries that currently are States

Parties to the CWC by adding “Bahamas,” “Dominican Republic,” “Iraq,” and “Lebanon,” which recently became States Parties. As a result of this change, the CW (Chemical Weapons) license requirements and policies in the EAR that apply to these countries now conform with those applicable to other CWC States Parties. However, because of the special EAR controls that apply to Iraq, items controlled under the EAR for CW reasons continue to require a license for export or reexport to Iraq, or for transfer within Iraq.

**DATES:** This rule is effective July 6, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AE55, by any of the following methods:

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

- E-mail: [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include “RIN 0694–AE55” in the subject line of the message.

- Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AE55.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet.K.Seehra@omb.eop.gov](mailto:Jasmeet.K.Seehra@omb.eop.gov), or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694–AE55)—all comments on the latter should be submitted by one of the four methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Theodore Curtin, Export Policy Analyst, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–1975.

**SUPPLEMENTARY INFORMATION:**

## Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the 2008 Australia Group (AG) intersessional decisions, which were recommended at the Intersessional Implementation Meeting held at The Hague on October 8–9, 2008, and adopted under the AG intersessional silent approval procedures in December 2008. The AG is a multilateral forum, consisting of 40 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The 2008 AG intersessional decisions included changes to the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software" affecting valves and toxic gas monitoring systems. Consistent with these changes, this rule amends Export Control Classification Number (ECCN) 2B350 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) by revising the controls on valves described in ECCN 2B350.g to include any such valves (including casings or preformed casing liners designed for such valves) that are made from any of the following ceramic materials:

(1) Silicon carbide with a purity of 80% or more by weight; (2) aluminum oxide (alumina) with a purity of 99.9% or more by weight; or (3) zirconium oxide (zirconia).

This rule also amends ECCN 2B351 on the CCL, which controls certain toxic gas monitoring systems, to specify the types of dedicated detecting components therefor that are controlled under this ECCN (i.e., detectors, sensor devices, and replaceable sensor cartridges). In addition, this rule adds a new ECCN 2D351 to control dedicated software for toxic gas monitoring systems and their dedicated detecting components controlled under ECCN 2B351. Software controlled under this new ECCN requires a license for destinations indicated under CB Column 2 and/or AT Column 1 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). The rule also makes two related conforming changes by: (1) Amending ECCN 2E001 (technology for the "development" of most 2A, 2B, or 2D items) to add a

reference to new ECCN 2D351 under the CB controls paragraph in the License Requirements section of the ECCN and (2) adding a reference to new ECCN 2D351 in Section 742.2(a)(2) of the EAR, which identifies those items that require a license to destinations indicated under CB Column 2 on the Commerce Country Chart.

The 2008 AG intersessional decisions also included changes to the AG "Control List of Dual-Use Biological Equipment and Related Technology and Software" affecting cross (tangential) flow filtration equipment. Consistent with these changes, the rule amends ECCN 2B352 on the CCL by revising the controls on cross (tangential) flow filtration equipment described in ECCN 2B352.d to specifically identify any such equipment using disposable or single-use filtration components as subject to control.

In addition, the 2008 AG intersessional decisions included changes to the AG "Guidelines for Transfers of Sensitive Chemical or Biological Items." As a result of these decisions, the AG "Guidelines" were revised to include definitions for "software," "program," and "microprogram," as well as language indicating that software identified on the AG Common Control Lists does not include mass market software, i.e., software that: (i) Is generally available to the public by being sold from stock at retail selling points, without restriction, by means of over-the-counter transactions, mail order transactions, electronic transactions, or telephone call transactions and (ii) is designed for installation by the user without further substantial support by the supplier.

Since the three definitions that were added to the AG "Guidelines" are currently found in Section 772.1 of the EAR, this rule simply adds a reference to the definitions in the "Related Definitions" paragraph for ECCN 1D390<sup>1</sup> on the CCL, which controls "software" for process control that is specifically configured to control or initiate "production" of chemicals controlled by 1C350, and new ECCN 2D351, which controls dedicated software for toxic gas monitoring systems and their dedicated components controlled under ECCN 2B351. This rule does not include in either of these two ECCNs a mass market software exclusion, as described

<sup>1</sup> Process control software in ECCN 1D390 is not included on the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software." However, BIS controls such software consistent with the chemical/biological (CB) controls described in Section 742.2(a)(2) of the EAR.

in the AG "Guidelines," because the General Technology Note (Note 2) in Supplement No. 2 to Part 774 of the EAR contains an identical mass market software exclusion, which is available for all software on the CCL (except encryption software controlled for "EI" reasons) under License Exception TSU, and which applies to all destinations, except those identified in Country Group E:1. Note that software that is eligible for the mass market exemption under License Exception TSU is distinct from publicly available software described in Section 734.3(b)(3) of the EAR, since the latter is not subject to the EAR while the former continues to be subject to the EAR.

Finally, this rule amends Supplement No. 2 to Part 745 of the EAR (titled "States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction") by adding "Bahamas," "Dominican Republic," "Iraq," and "Lebanon," which became States Parties to the CWC on May 21, 2009, April 26, 2009, February 12, 2009, and December 20, 2008, respectively. As a result of this change, the CW (Chemical Weapons) license requirements and policies that apply to these countries now conform with those applicable to other CWC States Parties, as described in Section 742.18 of the EAR. However, items controlled for CW reasons under the EAR continue to require a license for export or reexport to Iraq, or for transfer within Iraq, in accordance with the licensing policy for Iraq described in Section 746.3(a) of the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

## Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on August 5, 2009, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before August

20, 2009. Any such items not actually exported or reexported before midnight, on August 20, 2009, require a license in accordance with this regulation.

“Deemed” exports of “technology” and “source code” removed from eligibility for export under a license exception or without a license (under the designator “NLR”) as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before August 20, 2009.

Beginning at midnight on August 20, 2009, such “technology” and “source code” may no longer be released, without a license, to a foreign national subject to the “deemed” export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

### Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the ADDRESSES section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Section 5 U.S.C. 553(a)(1)). Further, no other law requires that a

notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

### List of Subjects

#### 15 CFR Part 742

Exports, Foreign trade.

#### 15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

#### 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, Parts 742, 745, and 774 of the Export Administration Regulations (15 CFR Parts 730-774) are amended as follows:

### PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. Section 742.2 is amended by redesignating paragraphs (a)(2)(viii) and (a)(2)(ix) as paragraphs (a)(2)(x) and (a)(2)(xi) and by adding new paragraphs (a)(2)(viii) and (a)(2)(ix) to read as follows:

#### § 742.2 Proliferation of chemical and biological weapons.

(a) \* \* \*

(2) \* \* \*

(viii) Dedicated software identified in ECCN 2D351 for the “use” of toxic gas monitoring systems and their dedicated detecting components controlled by ECCN 2B351.

(ix) Technology identified in ECCN 2E001 for the “development” of software controlled by ECCN 2D351.

\* \* \* \* \*

### PART 745—[AMENDED]

■ 3. The authority citation for 15 CFR part 745 continues to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

### Supplement No. 2 to Part 745—[Amended]

■ 4. Supplement No. 2 to Part 745 is amended:

■ a. By revising the undesignated center heading “List of States Parties as of July 1, 2008” to read “List of States Parties as of May 21, 2009”; and

■ b. By adding, in alphabetical order, the countries “Bahamas”, “Dominican Republic”, “Iraq”, and “Lebanon”.

### PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

### Supplement No. 1 to Part 774—[Amended]

■ 6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1D390 is amended by revising the “Related Definitions” paragraph, under the List of Items Controlled, to read as follows:

**1D390 “Software” for process control that is specifically configured to control or initiate “production” of chemicals controlled by 1C350.**

\* \* \* \* \*

#### List of Items Controlled

Unit: \* \* \*

Related Controls: \* \* \*

Related Definitions: See Section 772.1 of the EAR for the definitions of “software,” “program,” and “microprogram.”

Items: \* \* \*

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising paragraph (g) under “Items” in the List of Items Controlled to read as follows:

**2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

*Unit:* \* \* \*

*Related Controls:* \* \* \*

*Related Definitions:* \* \* \*

*Items:*

\* \* \* \* \*

g. Valves with nominal sizes greater than 1.0 cm (3/8 in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

- g.1. Alloys with more than 25% nickel and 20% chromium by weight;
- g.2. Nickel or alloys with more than 40% nickel by weight;
- g.3. Fluoropolymers;
- g.4. Glass or glass lined (including vitrified or enameled coatings);
- g.5. Tantalum or tantalum alloys;
- g.6. Titanium or titanium alloys;
- g.7. Zirconium or zirconium alloys;
- g.8. Niobium (columbium) or niobium alloys; or
- g.9. Ceramic materials, as follows:
  - g.9.a. Silicon carbide with a purity of 80% or more by weight;
  - g.9.b. Aluminum oxide (alumina) with a purity of 99.9% or more by weight; or
  - g.9.c. Zirconium oxide (zirconia).

\* \* \* \* \*

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B351 is amended by revising the “Related Controls” and “Related Definitions” paragraphs, under the List of Items Controlled, to read as follows:

**2B351 Toxic gas monitoring systems and their dedicated detecting components (i.e., detectors, sensor devices, and replaceable sensor cartridges), as follows, except those systems and detectors controlled by ECCN 1A004.c (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

*Unit:* \* \* \*

*Related Controls:* See ECCN 2D351 for “software” for toxic gas monitoring systems and their dedicated detecting components controlled by this ECCN. Also see ECCN 1A004, which controls chemical detection systems and specially designed components therefor that are specially designed or modified for detection or identification of chemical warfare agents, but not specially designed for military use, and ECCN 1A995, which controls certain detection equipment and components not controlled by ECCN 1A004 or by this ECCN.

*Related Definitions:* (1) For the purposes of this entry, the term “dedicated” means committed entirely to a single purpose or device. (2) For the purposes of this entry, the term “continuous operation” describes the capability of the equipment to operate on line without human intervention. The intent of this entry is to control toxic gas monitoring systems capable of collection and detection of samples in environments such as chemical plants, rather than those used for batch-mode operation in laboratories.

\* \* \* \* \*

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended by revising paragraph (d)(1)(b) under “Items” in the List of Items Controlled to read as follows:

**2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

*Unit:* \* \* \*

*Related Controls:* \* \* \*

*Related Definitions:* \* \* \*

*Items:*

\* \* \* \* \*

- d. \* \* \*
- d.1. \* \* \*
- d.1.b. Having any of the following characteristics:
  - d.1.b.1. Capable of being sterilized or disinfected in-situ; or
  - d.1.b.2. Using disposable or single-use filtration components.

\* \* \* \* \*

■ 10. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, is amended by adding a new ECCN 2D351 immediately following ECCN 2D290 to read as follows:

**2D351 Dedicated “software” for toxic gas monitoring systems and their dedicated detecting components controlled by ECCN 2B351.**

**License Requirements**

*Reason for Control:* CB, AT

Control(s)	Country chart
CB applies to entire entry .....	CB Column 2.
AT applies to entire entry .....	AT Column 1.

**License Exceptions**

*CIV:* N/A.

*TSR:* N/A.

**List of Items Controlled**

*Unit:* \$ value.

*Related Controls:* N/A.

*Related Definitions:* (1) For the purposes of this entry, the term “dedicated” means committed entirely to a single purpose or device. (2) See Section 772.1 of the EAR for the definitions of “software,” “program,” and “microprogram.”

*Items:*

The list of items controlled is contained in the ECCN heading.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E001 is amended by revising the CB controls paragraph in the “License Requirements” section to read as follows:

**2E001 “Technology” according to the General Technology Note for the “development” of equipment or “software” controlled by 2A (except 2A983, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998), or 2D (except 2D983, 2D991, 2D992, or 2D994).**

**License Requirements**

*Reason for Control:* \* \* \*

Control(s)	Country chart
* * * * *	* * * * *

CB applies to “technology” for equipment controlled by 2B350 to 2B352, valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g, and software controlled by 2D351.

\* \* \* \* \*

Dated: June 29, 2009.

**Matthew S. Borman,**  
Acting Assistant Secretary for Export  
Administration.

[FR Doc. E9-15827 Filed 7-2-09; 8:45 am]

BILLING CODE 3510-33-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

RIN 2900-AM91

### Vocational Rehabilitation and Employment Program—Duty To Assist

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

**SUMMARY:** This document amends the vocational rehabilitation and employment regulations of the Department of Veterans Affairs (VA) concerning VA's responsibility to provide notification regarding information or evidence needed for an individual to substantiate a claim for vocational rehabilitation benefits and services, and regarding applicable time periods. VA's duty to assist claimants in substantiating their claims for benefits was expanded by the Veterans Claims Assistance Act of 2000. This rulemaking incorporates those provisions in VA's regulations. Specifically, upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help the claimant obtain the evidence necessary to substantiate the claim. In addition, VA is making changes to improve readability and other clarifying changes that are nonsubstantive.

**DATES:** *Effective Date:* This final rule is effective August 5, 2009.

*Applicability Date:* For information concerning the date of applicability, see the Supplementary Information section of this document.

**FOR FURTHER INFORMATION CONTACT:** Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-9613.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on July 1, 2008 (73 FR 37402), we proposed to amend regulations governing VA's responsibility to provide notification regarding information or evidence needed for an individual to substantiate a claim for vocational

rehabilitation benefits and services, and regarding applicable time periods. We provided a 60-day comment period that ended on September 2, 2008.

We received comments from one organization and one individual. With respect to the individual commenter, the submission stated "see the attached for proposed changes to this regulation," yet we did not receive an attachment or the commenter's contact information. Consequently, we make no changes based on the commenter's submission.

The organization commented with respect to the 30-day period in proposed 38 CFR 21.32(a)(3) and (d) after which VA may decide a claim if the claimant has not responded to the notification provided under proposed § 21.32(a) concerning information and evidence that is necessary to substantiate the claim. The commenter expressed the view that 30 days from the date of notice is not sufficient time for a claimant to respond. It asserted that after taking into account time after the date of the notice until receipt by the claimant, and time for mailing back to VA, the 30-day period "will effectively give most disabled veterans only about 15 days from receipt of your letter in which to digest its contents, obtain assistance and/or needed documentation, and prepare and mail a response to you." We do not agree with this comment and make no change in the 30-day period based on the comment.

We note that the commenter provided no evidence supporting its assertions as to the time that is involved prior to receipt of VA's notice and that is needed to allow for receipt by VA of the claimant's response. Even considering that there may be significantly less than the full 30 days to prepare a response, a claimant need not provide all the information and evidence within the 30-day period. A claimant may delay VA action beyond the 30 days by simply responding with a request that VA wait beyond the 30-day period. We believe that the 30-day time period referred to in proposed § 21.32(a)(3) and (d) is a reasonable time period for these claimants to respond. It is specifically supported by our experience in administering VA's vocational rehabilitation programs, and is the same time for response provided in other circumstances under those programs. Further, whether or not the claimant responds within 30 days, proposed § 21.32 provided a one-year time limit for receipt by VA of the information of evidence referred to in the notice, and for readjudication if VA had decided the claim prior to the one-year time period.

In addition, we note that the 30-day time period is supported by administrative concerns, and is intended to assure that a lack of response does not unnecessarily delay a VA decision on the claim.

With respect to proposed § 21.33(d), the commenter stated that it would be "unreasonable to expect that VA will be able to determine from a cursory review of a 'substantially complete application' that there is no reasonable possibility that any notice and/or assistance the VA would provide to the claimant would substantiate the claim." However, under proposed § 21.33(d), more than a cursory review would be involved before deciding to discontinue providing assistance. VA would be required to evaluate the application for benefits to determine whether any of the four circumstances under which VA will discontinue assistance exists. Further, the provision is consistent with principles relied upon throughout 38 CFR part 21. (See 38 CFR 21.1032(d) concerning VA's duty to assist claimants for VA education benefits.) We do not believe any change is warranted based on this comment.

VA appreciates the submissions in response to the proposed rule. For the reasons stated above and those in the notice of proposed rulemaking, the proposed rule is adopted as a final rule without change.

The preamble to the proposed rule provided notice of our intent that its provisions be applicable to claims filed on or after the effective date of the final rule. In accordance with that statement of our intent, VA will apply the provisions of this final rule to claims for vocational rehabilitation benefits and services filed on or after August 5, 2009.

### Paperwork Reduction Act of 1995

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits