

Dated: September 21, 2010.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2010-24093 Filed 9-24-10; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 222

[DoD-2010-OS-0043; RIN 0790-AI62]

DoD Mandatory Declassification Review (MDR) Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This part implements policy established in DoD Instruction 5200.01. It assigns responsibilities and provides procedures for members of the public to request a declassification review of information classified under the provisions of Executive Order 13526, or predecessor orders.

DATES: Comments must be received by November 26, 2010.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number and/or RIN number 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: Robert Storer, 703-696-2197.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 222 does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the

environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order 12866, as amended by Executive Order 13422.

Sec. 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 222 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 222 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule implements the procedures for the effective administration of the DoD MDR Program.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 222 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 222 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 222

Declassification; security information. Accordingly, 32 CFR part 222 is proposed to be added to read as follows:

PART 222—DOD MANDATORY DECLASSIFICATION REVIEW (MDR) PROGRAM

Sec.

- 222.1 Purpose.
- 222.2 Applicability.
- 222.3 Definitions.

222.4 Policy.

222.5 Responsibilities.

222.6 MDR processing procedures.

Appendix A to Part 222—Addressing MDR requests.

Authority: 5 U.S.C. 552

§ 222.1 Purpose.

This part implements policy established in DoD Instruction 5200.01.¹ It assigns responsibilities and provides procedures for members of the public to request a declassification review of information classified under the provisions of Executive Order 13526, or predecessor orders.

§ 222.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

§ 222.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Foreign government information. (1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as "Foreign Government Information" under the terms of a predecessor order to E.O. 13526.

Formal tracking system. A system designed to ensure DoD Component accountability and compliance. For each MDR request, the system shall contain as a minimum a unique tracking number, requester's name and organizational affiliation, information requested, date of receipt, and date of closure.

¹ Available at <http://www.dtic.mil/whs/directives/corres/pdf/520001p.pdf>.

Formerly Restricted Data. Information removed from the Restricted Data category upon a joint determination by the Department of Energy (or antecedent Agencies) and the Department of Defense that such information relates primarily to the military utilization of atomic weapons and that such information can be safeguarded adequately as classified defense information. For purposes of foreign dissemination, this information is treated in the same manner as Restricted Data.

MDR. Review classified information for declassification in response to a declassification request that meets the requirements under section 3.5 of Executive Order 13526.

Restricted Data. All data concerning the following:

- (1) Design, manufacture or utilization of atomic weapons;
- (2) Production of special nuclear material; or
- (3) Use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category under Section 142 of the Atomic Energy Act of 1954, as amended.

Transclassification of Foreign Nuclear Information (TFNI). Classified information moved from the Restricted Data category to National Security Information (NSI) after the Department of Energy and the Director, National Intelligence jointly determine that it:

- (1) Concerns the atomic energy programs of other nations, and
- (2) It can be adequately safeguarded in a manner similar to NSI, and
- (3) It shall not be automatically declassified.

§ 222.4 Responsibilities.

(a) The Director, Washington Headquarters Services, shall process MDR requests for OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, and DoD components not listed in the Appendix A to this part.

(b) The Heads of the DoD Components listed in the Appendix A to this part shall:

(1) Establish procedures for the processing of MDR requests and appeals for information originating within the Component.

(2) Appoint an appellate authority to adjudicate MDR appeals for the Component.

§ 222.5 MDR processing procedures.

(a) *General.* (1) The DoD Components shall process MDR requests from the public for classified information originating within the DoD Component in accordance with title 32, Code of Federal Regulations (CFR), part 2001.

(2) Information not subject to review for public release under the MDR includes:

(i) Unclassified documents or previously classified documents that are declassified prior to the receipt of the MDR request. These documents must be requested under the provisions of the Freedom of Information Act (FOIA), section 552(b) of title 5, United States Code (U.S.C.) and 32 CFR part 286.

(ii) Information reviewed for declassification within 2 years preceding the date of receipt of the MDR request. If this is the case, the requester shall be provided the documents as previously released and advised of the right to appeal to the DoD Component within 60 days unless the documents are already under appeal to the Interagency Security Classification Appeals Panel (ISCAP).

(iii) Information exempted from search and review by sections 431 and 432 of title 50, U.S.C.

(iv) Documents originated by the incumbent President; the incumbent President's White House Staff; committees, commissions, or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President.

(v) Information marked as Restricted Data, Formerly Restricted Data, or Transclassification of Foreign Nuclear Information.

(vi) Information that is the subject of pending litigation.

(vii) This section shall not apply to any request for a review made to an element of the Intelligence Community that is made by a person other than an individual as that term is defined by 5 U.S.C. 552a(a)(2), or by a foreign government entity or any representative thereof.

(b) *MDR Requester Guidelines.* Members of the public seeking the declassification of DoD documents under the provisions of section 3.5 of Executive Order 13526 shall:

(1) Address the written request to the appropriate DoD Component listed in the Appendix A to this part.

(2) Identify the requested document or information with sufficient specificity to enable the DoD Component to locate it with a reasonable amount of effort. Information that would provide the sufficient specificity would include a document identifier such as originator, date, title, and/or subject, the National Archives and Records Administration accession number, or other applicable unique document identifying number. Broad or topical MDR requests for records on a particular subject, such as

“any and all documents concerning” a subject do not meet this standard.

(3) Include a correct return mailing address with the request.

(4) Include a statement that the requester understands that the request may incur processing charges in accordance with paragraph (j) of this section.

(c) *Receipt and Control.* Upon receipt of an MDR request, the DoD Component shall send the requester an acknowledgement and open a file in a formal control system. The acknowledgement shall include the tracking number and date of receipt of the request.

(d) *Simultaneous MDR and FOIA Requests.* DoD Components should be aware of possible requests under both the MDR and the FOIA. In accordance with section 2001.33(f) of 32 CFR part 2001, if a requester asks for the same information under the FOIA and the MDR, the DoD Component shall ask the requester to select only one process. If the requester does not select a process, then the DoD Component shall process the requested information under the FOIA.

(e) *MDR Document Review Process.*

(1) Requests normally will be processed on a first in first out basis by date of receipt.

(2) Every effort shall be made to ensure that a response to an MDR request is provided to the requester within 1 year from the date of receipt.

(3) The DoD Components shall conduct line-by-line reviews of documents responsive to an MDR request to determine if the information contained within the documents continues to adhere to the standards for classification according to Executive Order 13526. This line-by-line review must take into account the unique sensitivity of foreign government information (FGI) as outlined in paragraph (g) of this section. In accordance with section 3.6 (b) of Executive Order 13526, classified information originating with another U.S. Government agency contained in records of the DoD Components will be referred to the originating agency for a declassification and release determination. Likewise, classified information in a DoD Component's records originating with another DoD Component will be referred to the originating Component. It is the responsibility of the DoD Component originally receiving the MDR request to manage these referrals and to incorporate the other agency's or DoD Component's determinations when preparing the final decision on the

request. The review of each document will determine if the document:

(i) No longer meets the standards for classification as established by Executive Order 13526 and current statutes, and is therefore declassified in full.

(ii) Contains portions still meeting the standards for classification and is therefore declassified in part and denied in part.

(iii) Still meets the standards for classification in its entirety and is therefore denied in full.

(4) For documents meeting the criteria of paragraphs (e)(3)(i) and (ii) of this section, the DoD Components shall not release any unclassified information exempt from public release pursuant to Exemptions 2 through 9 of the FOIA. 32 CFR part 286 provides a more detailed explanation of the FOIA exemptions.

(5) When this process is complete, the DoD Components shall redact all information determined exempt from release as warranted under applicable law and authority. All of the remaining information within the documents, which is determined to be publicly releasable information, shall be provided promptly to the requester.

(f) *Public Access.* In the interest of transparency, the DoD Components should take efforts to post documents released under the MDR program on DoD Component Web sites.

(g) *FGI* If a requested document originated with a foreign government or organization and was classified by that government or organization, the DoD Component shall:

(1) Conduct an MDR review of the document in accordance with DoD 5200.1-R.²

(2) Process mandatory declassification review requests for classified records containing foreign government information in accordance with this section. The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that does not permit automatic or unilateral declassification. The declassifying agency or the Department of State may consult with the foreign government(s) prior to declassification.

(h) *Denial of Information.* (1) When classified information is denied, the DoD Component shall advise the requester, in writing:

(i) That information currently and properly classified has been denied

(whether a document in its entirety or partially) in accordance with the appropriate sections of Executive Order 13526.

(ii) Of the right to appeal the denial to the DoD Component within 60 days of receipt of the denial.

(iii) Of the mailing address for the appellate authority.

(2) When unclassified information is withheld because it is determined exempt from release pursuant to Exemptions 2 through 9 of the FOIA (whether or not classified information was also withheld within the same document), the DoD Component shall advise the requester that:

(i) Section 3.5(c) of Executive Order 13526 allows for the denial of information when withholding it is authorized and warranted under applicable law.

(ii) Unclassified information exempt from public release pursuant to one or more exemptions of the FOIA has been withheld.

(3) For the denial of unclassified information, the requester shall not be given MDR appeal rights because the MDR applies only to the denial of classified information and because the request was not processed under the FOIA.

(4) The DoD Component is not required to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified pursuant to Executive Order 13526.

(i) *MDR Appeals.* MDR appeals are for the denial of classified information only. DoD Components shall make an appellate decision within 60 working days of receipt of an MDR appeal. If additional time is required to make a determination, the appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for the extension. When the appellate review is complete, the appellate authority shall notify the requester in writing of the final determination and of the reasons for any denial. If the appellate authority determines that some information remains classified under the provision of Executive Order 13526, the requester will be advised of the right to appeal the final decision to the ISCAP within 60 days of the final component decision, in accordance with Appendix A of 32 CFR part 2001.

Appendix A to Part 222—Addressing MDR Requests

(a) *General.* The Department of Defense does not have a central repository for DoD records. MDR requests therefore should be

addressed to the DoD Component that has custody of the requested record. If a requester is not sure which DoD Component has custody or if the DoD Component is not listed paragraph (b) of this Appendix, the MDR request should be directed to the Washington Headquarters Services address in paragraph (b)(1) of this Appendix.

(b) *DoD Component MDR Addresses.* (1) *OSD and the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff.* Department of Defense, Washington Headquarters Services, Records and Declassification Division, 1155 Defense Pentagon, Washington, DC 20301-1155. EXCEPTION: *DoD Inspector General.* DoD Office of Inspector General, 400 Army Navy Drive, Arlington, VA 22202-4704.

(2) *Department of the Army.* U.S. Army Declassification Activity, Attention: AHRC-RDD, 8850 Richmond Highway, Suite 300, Alexandria, VA 22309.

(3) *Department of the Navy.* Department of the Navy, Chief of Naval Operations, DNS-34, 2000 Navy Pentagon, Washington, DC 20350-2000.

(4) *Department of the Air Force.* Department of the Air Force, HAF/IMIO (MDR), 1000 Air Force Pentagon, Washington, DC 20330-1000.

(5) *United States Marine Corps.* Commandant of the Marine Corps, HQMC Code ARS, 2 Navy Annex, Room 1006, Washington, DC 20830-1775.

(6) *Defense Advanced Research Projects Agency.* Defense Advanced Research Projects Agency, 3701 N. Fairfax Drive, Arlington, VA 22203-1714.

(7) *Defense Contract Audit Agency.* Director, Defense Contract Audit Agency, Attention: CPS, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(8) *Defense Information Systems Agency.* Defense Information Systems Agency, Attention: Security Division, MPS 6, 5111 Leesburg Pike, Suite 100, Falls Church, VA 22041.

(9) *Defense Intelligence Agency.* Defense Intelligence Agency, Attention: DAN-1A (FOIA), Washington, DC 20340-5100.

(10) *Defense Logistics Agency.* Defense Logistics Agency, Attention: DLA/DSS-S, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

(11) *Defense Security Service.* Defense Security Service, Office of FOIA & Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

(12) *Defense Threat Reduction Agency.* Defense Threat Reduction Agency, Attention: SCR, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6201.

(13) *Missile Defense Agency.* Missile Defense Agency, Attention: MDA/DS, 7100 Defense Pentagon, Washington, DC 20301-7100.

(14) *National Geospatial-Intelligence Agency.* National Geospatial-Intelligence Agency, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003.

(15) *National Reconnaissance Office.* National Reconnaissance Office, NRO-DDA-MSO-ASG-IMSC-IART, 14675 Lee Road, Chantilly, VA 20151-1715.

(16) *National Security Agency/Central Security Service.* National Security Agency,

² Available at <http://www.dtic.mil/whs/directives/corres/pdf/520001r.pdf>.

Declassification Office, DJP5, 9800 Savage Road, Suite 6884, Fort George G. Meade, MD 20755-6884.

(17) *U.S. Africa Command*. U.S. Africa Command, Unit 29951, APO AE 09751-9951.

(18) *U.S. Central Command*. U.S. Central Command, Attention: CCJ6-RDD, 7115 South Boundary Blvd., MacDill AFB, FL 33621-5101.

(19) *U.S. European Command*. U.S. European Command, Attention: ECJ1-AX, Unit 30400, APO AE 09131.

(20) *U.S. Joint Forces Command*. U.S. Joint Forces Command, Code J024, 1562 Mitscher Ave., Suite 200, Norfolk, VA 23511-2488.

(21) *U.S. Northern Command*. U.S. Northern Command, HQ USNORTHCOM/CSM, 250 Vandenberg Street, Suite B016, Peterson AFB, CO 80914-3804.

(22) *U.S. Pacific Command*. U.S. Pacific Command, Attention: J151 FOIA, Box 64017, Camp Smith, HI 96861-4017.

(23) *U.S. Southern Command*. U.S. Southern Command, Attention: SCJ1-A (FOIA), 3511 NW 91st Avenue, Miami, FL 33172-1217.

(24) *U.S. Special Operations Command*. U.S. Special Operations Command, Attention: SOCS-SJS-SI (FOIA), 7701 Tampa Point Blvd., MacDill AFB, FL 33621-5323.

(25) *U.S. Strategic Command*. U.S. Strategic Command, Attention: CS50, 901 SAC Blvd., STE 1C17, Offutt AFB, NE 68113-6000.

(26) *U.S. Transportation Command*. U.S. Transportation Command, Chief, Resources Information, Communications, and Records Management, Attention: TCJ6-RII, 508 Scott Drive, Bldg. 1961, Scott AFB, IL 62225-5357.

Dated: September 20, 2010.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2010-24094 Filed 9-24-10; 8:45 am]

BILLING CODE 5001-06-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2010-0657; FRL-9205-7]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Michigan State Implementation Plan (SIP) under the Federal Clean Air Act (CAA). The revisions serve to meet specific requirements of the prevention of significant deterioration (PSD) construction permit program in Michigan. Michigan has submitted two SIP revisions pertaining to the "net emission increase" definition and the

"reasonable possibility" recordkeeping and reporting requirements, and EPA has found the revisions acceptable.

DATES: Comments must be received on or before October 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-0657, by one of the following methods:

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

2. *E-mail: blakley.pamela@epa.gov*.

3. *Fax: (312) 692-2450*.

4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits 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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-4447, *blakley.pamela@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the final rule and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule,

EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 11, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010-23983 Filed 9-24-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0484; FRL-9206-1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Flexible Packaging Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision includes amendments to Maryland's regulation for Volatile Organic Compounds from Specific Processes, and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) for flexible packaging printing. These amendments will reduce emissions of volatile organic compound (VOC) emissions from flexible packaging printing. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-