

Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on April 29, 2011.

**Ray Towles,**  
*Deputy Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14

CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

\* \* \* *Effective Upon Publication*

| AIRAC date    | State | City              | Airport                        | FDC No. | FDC date | Subject                                  |
|---------------|-------|-------------------|--------------------------------|---------|----------|--|
| 2-Jun-11 .... | IN    | New Castle .....  | New Castle-Henry Co Muni ..    | 1/5020  | 4/6/11   | NDB RWY 27, Amdt 5A                      |
| 2-Jun-11 .... | OH    | Akron .....       | Akron-Canton Rgnl .....        | 1/5370  | 4/12/11  | RNAV (GPS) RWY 5, Orig                   |
| 2-Jun-11 .... | OH    | Akron .....       | Akron-Canton Rgnl .....        | 1/5371  | 4/12/11  | VOR RWY 5, Amdt 3                        |
| 2-Jun-11 .... | KS    | Syracuse .....    | Syracuse-Hamilton County Muni. | 1/5584  | 4/12/11  | Takeoff Minimums and Obstacle DP, Orig   |
| 2-Jun-11 .... | AR    | Fort Smith .....  | Fort Smith Rgnl .....          | 1/5585  | 4/12/11  | Takeoff Minimums and Obstacle DP, Amdt 4 |
| 2-Jun-11 .... | WI    | Burlington .....  | Burlington Muni .....          | 1/6902  | 4/1/11   | VOR RWY 29, Amdt 8                       |
| 2-Jun-11 .... | LA    | Baton Rouge ..... | Baton Rouge Metropolitan ....  | 1/6922  | 4/19/11  | RNAV (GPS) RWY 4L, Amdt 1B               |
| 2-Jun-11 .... | PA    | Washington .....  | Washington County .....        | 1/6932  | 4/19/11  | ILS OR LOC RWY 27, Orig                  |
| 2-Jun-11 .... | MS    | Tupelo .....      | Tupelo Rgnl .....              | 1/6935  | 4/19/11  | ILS OR LOC RWY 36, Amdt 9                |
| 2-Jun-11 .... | IL    | Peoria .....      | General Downing-Peoria Intl    | 1/9091  | 4/1/11   | ILS OR LOC RWY 31, Amdt 7A               |
| 30-Jun-11 ... | MT    | Missoula .....    | Missoula Intl .....            | 1/3515  | 1/25/11  | ILS Z RWY 11, Amdt 12A                   |
| 30-Jun-11 ... | MT    | Missoula .....    | Missoula Intl .....            | 1/3516  | 1/25/11  | ILS Y RWY 11, Orig-A                     |

[FR Doc. 2011-11370 Filed 5-13-11; 8:45 am]  
BILLING CODE 4910-13-P

**DEPARTMENT OF STATE**

**22 CFR Parts 120, 124, and 126**

RIN 1400-AC68

[Public Notice: 7428]

**International Traffic in Arms Regulations: Dual Nationals and Third-Country Nationals Employed by End-Users**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to establish a

policy to address those who are unable to implement the exemption for intra-company, intra-organization, and intra-government transfers of defense articles and defense services by approved end-users to dual national and third-country nationals who are employees of such approved end-users. Prior to making transfers to certain dual national and third-country national employees under this policy, approved end-users must screen employees, make an affirmative decision to allow access, and maintain records of screening procedures to prevent diversion of ITAR-controlled technology for purposes other than those authorized by the applicable export license or other authorization.

**DATES:** *Effective Date:* This rule is effective August 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2792 or Fax (202) 261-8199; E-mail *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, Dual and Third-Country Nationals.

**SUPPLEMENTARY INFORMATION:** This is part of the President’s Export Control Reform effort. The Department of State is amending parts 124 and 126 of the ITAR to reflect new policy regarding end-user employment of dual nationals and third-country nationals.

As a part of the President’s Task Force on Export Control Reform, the previous policy regarding the treatment of dual nationals and third-country nationals employed by approved end users was re-evaluated. A proposed rule to

eliminate the separate licensing requirement for dual nationals and third-country nationals employed by licensed end-users was presented for public comment. The proposed rule had a comment period ending September 10, 2010. Thirty-two (32) parties filed comments recommending changes. Having thoroughly reviewed and evaluated the comments and the recommended changes, the Department has determined that it will, and hereby does, adopt the proposed rule, with changes noted and minor edits, and promulgates it as a final rule. The Department's evaluation of the written comments and recommendations follows.

### Comment Analysis

The overwhelming majority of commenting parties expressed dissatisfaction with the current rule regarding dual and third-country nationals, citing conflicts with foreign human rights laws as well as the burden of compliance, and welcomed the Directorate of Defense Trade Controls' (DDTC) efforts to reform current practice. One commenting party asserted that the "tremendous administrative burden" imposed on foreign end-users is exaggerated. By contrast, six inputs, including one from a group representing 21 nations, agreed with the assessment that current rules impose a large administrative burden, such as separate accounting and licensing of foreign nationals. Four commenting parties, including a major U.S. industry association, pointed out that the current rule is an extensive administrative burden for U.S. manufacturers and exporters, not just foreign end-users, and places U.S. companies at a disadvantage with foreign competitors.

One commenting party recommended adding language to § 126.18(a) to make clear that the exemption applies "notwithstanding any other provisions of this Part" to make clear that the limitations of the last sentence of § 126.1(a), which would have conflicted with the intent of the proposed rule, did not apply. DDTC agreed and adopted this change.

One commenting party argued that the current nationality (or place of birth) standard should stay in place, citing recent prosecutions of Chi Mak, Greg Chung, and Noshir Gowadia. We note that all three cases involve naturalized U.S. citizens, whose prosecutions would not have been affected by the proposed rule. It should also be pointed out that *even if* the proposed rule had applied to them, all three would have failed the substantive contacts test and, thus,

could not have received the defense articles at issue under the exemption.

Another commenting party criticized the concept of "substantive contacts" in favor of clarifying the definition of "non-U.S." person or foreign person. We note that the current definition of foreign person in § 120.16 is consistent with both U.S. law and usage in the proposed rule. Therefore, we find no need to change the definition of foreign person and do not adopt the recommendation.

One commenting party, a large U.S. aerospace firm, argued that DDTC should return to its *pre-1999 rules*, where there was no additional licensing requirement for dual nationals or third-country nationals working for authorized end-users. This option was explored early on in the development of this proposed rule, but DDTC chose not to pursue that option any further due to policy implications outside of the Department of State.

Ten commenting parties recommended that the exemption proposed in § 126.18 be expanded to include "defense services." The current proposal was limited to "defense articles," which by the definition in § 120.6 includes technical data. We note that the rule was intended to address concerns about restrictions on dual national and third-country national employees of licensed end-users and consignees who would have access to defense articles, which, as noted above, includes technical data per § 120.6, within the scope of their employment. The intent of the rule was to create a policy for such transfers in a manner that would prevent diversions of such articles to unauthorized end-users. Thus, the proposed rule was limited to use of the defense article within a company and within the scope of the license in question. Defense services, on the other hand, cannot be "transferred" within a company in the manner in which defense articles can. Rather, defense services are rendered to specific end-users identified in the license or other authorization. As such, the defense services are rendered to the named company rather than the individual employees. In any event, if the contemplated defense service involves defense articles already licensed to the company, the proposed exemption would generally cover dual and third-country national employees receiving the defense service. We deem it neither necessary nor prudent to specifically add defense services to this rule and thus do not adopt the recommendation.

One commenting party asserted that there was uncertainty regarding whether the exemption applied to *academic*

*institutions*. This proposed rule is an incremental change in favor of foreign business entities, foreign governmental entities, and international organizations, recognizing internal incentives for the protection of export controlled articles and data. The Department of State is not prepared to extend the exemption to academic institutions at the present time.

Ten commenting parties recommended that the current § 124.16 *not be removed*. That provision allows for a limited exception for access to unclassified defense articles exported in furtherance of or produced as a result of a Technical Assistance Agreement/ Manufacturing License Agreement, retransfer of technical data and defense services to dual national and third-country national employees of licensed signatories that are nationals exclusively of NATO member states, EU member states, Australia, Japan, New Zealand, or Switzerland. A major concern was that the proposed rule, unlike § 124.16, did not include approved sub-licensees. After careful consideration, we concurred with the recommendation to retain § 124.16 and have amended the section to include workers who have long term employment relationships with licensed end-users, per a new definition to "regular employee" added in part 120.

One foreign governmental commenting party observed that there is a need to expand the exemption beyond the physical territories of the governmental end-user or international organization. For example, such would be required to facilitate repair of a disabled aircraft overseas. This change was adopted subject to a requirement that such operations are in the conduct of official business by the government or international organization and provided such activities are within the scope of the license.

Nine commenting parties recommended the proposed rule apply to *contract employees*, not just "bona fide, regular employees." The intent of the proposed rule was to recognize vested interests within companies, international organizations, and foreign governmental entities to carefully screen employees for purposes of trustworthiness. Full-time employment meets that criterion as it indicates a higher level of scrutiny and represents a long-term relationship with the entity at issue, as opposed to the transactional, temporary nature of the contractual arrangement. Furthermore, companies, international organizations, and foreign governmental entities bear significantly more legal responsibility for the acts of their regular employees than they do for

the acts of contactors. However, DDTC is prepared to narrowly extend this policy to workers who have long term employment relationships with licensed end-users, per a new definition to "regular employee" added in part 120.

Several commenting parties recommended clarification of the meaning of "substantive contacts." Many of the requests for clarification center around specific areas discussed below. One commenting party expressed concern that any employee with a *family member* in a proscribed country would automatically be disqualified. It is not DDTC's intent to deny access based solely upon relationships or contacts with family members in a context posing no risk of diversion. We note that contacts with government officials and agents of governments of § 126.1(a) countries, be they family or not, would require higher scrutiny.

Another commenting party expressed concern that any *personal or business travel* to a country listed in § 126.1 would disqualify that person from access to a defense article. The intent of the proposed rule is not to automatically disqualify a person on the basis of such travel, where the travel does not involve contacts with foreign agents or proxies likely to lead to diversion of controlled data or articles. Instead, full disclosure about travel is required, which would be the basis of an assessment of diversion risk on a case-by-case basis.

One commenting party objected to the limitation of the exemption to the *country where the end-user is located*, pointing out that international organizations operate in more than one country. We note that licenses for international organization end-users will specify the location(s) and country(ies) where the end-item will be utilized. Therefore, DDTC believes that transfers to locations (and end-users) within the scope of the license poses no problems. Any contemplated transfers beyond the authorized and licensed location(s) will require an additional license (or an amendment to an existing license), and is a prudent limitation on the rule. This rule is not intended to authorize unlimited transfers around the world for end-users with nominal connections throughout the globe.

One commenting party recommended that the requirement for screening not apply to *citizens (including dual nationals) and permanent residents* of the host country. This approach would exclude from screening a large group of individuals who continue to maintain affiliation by citizenship with a third country (*i.e.*, different than that of the authorized end-user). Though we agree

that citizens who relinquish citizenship of the former country would not require screening, the nature of continuing relationships with the third country for those maintaining citizenship remains relevant, especially if the country is subject to restrictions in § 126.1. In any event, this rule does not present foreign citizenship alone as a bar to access to ITAR controlled defense articles.

Several commenting parties recommended clarification of whether the proposed rule would apply to both *classified and unclassified data*. In the absence of explicit inclusion, this rule will not apply to classified data. The word "unclassified" was added to the first sentence in § 126.18(a) as a qualifier to make the point clearer. We note that the release of classified data to foreign persons is governed by separate National Disclosure directives and policies. To be clear, this rule is not a grant of a separate authority for the transfer of classified information.

Several commenting parties expressed concern about the record-keeping requirements, especially where *local privacy laws* may apply. We note that the records in question are intended for use by DDTC, a governmental entity for governmental use and not for public release. DDTC's function in this capacity is analogous to the exchange of information with cross-border law enforcement agencies that regularly receive and have a similar obligation to protect information subject to privacy laws.

### Regulatory Analysis and Notices

#### *Administrative Procedure Act*

The Department of State is of the opinion that restricting defense article exports is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule with a 60-day provision for public comment and without prejudice to its determination that restricting defense article exports is a foreign affairs function.

#### *Regulatory Flexibility Act*

Since this amendment is not subject to the provisions of 5 U.S.C. § 553(b), it does not require analysis under the Regulatory Flexibility Act.

#### *Unfunded Mandates Reform Act of 1995*

This amendment does not involve a mandate that will result in the

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

#### *Executive Orders 12372 and 13132*

This amendment will not have substantial direct effects 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

#### *Executive Order 12866*

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that restricting defense articles exports is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

#### *Executive Order 13563*

The Department of State has considered this rule in light of Section 1(b) of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

#### *Executive Order 12988*

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this rulemaking.

*Paperwork Reduction Act*

The Department of State is of the opinion that this rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, but will provide a separate Federal Register notification regarding such requirements.

**List of Subjects in 22 CFR Parts 120, 124, and 126**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 124, and 126 are amended as follows:

**PART 120—PURPOSE AND DEFINITIONS**

- 1. The authority citation for part 120 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

**§§ 120.33 through 120.38 [Reserved]**

- 2. Add reserved §§ 120.33 through 120.38 and § 120.39 to read as follows:

**§ 120.39 Regular employee.**

(a) A regular employee means for purposes of this subchapter:

- (1) An individual permanently and directly employed by the company, or
- (2) An individual in a long term contractual relationship with the company where the individual works at the company's facilities, works under the company's direction and control, works full time and exclusively for the company, and executes nondisclosure certifications for the company, and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license).

**PART 124—AGREEMENTS, OFFSHORE PROCUREMENT AND OTHER DEFENSE SERVICES**

- 3. The authority citation for part 124 continues to read as follows:

**Authority:** Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

- 4. In § 124.8, paragraph (5) is revised to read as follows:

**§ 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.**

\* \* \* \* \*

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained.

\* \* \* \* \*

- 5. Section 124.16 is revised to read as follows:

**§ 124.16 Special retransfer authorizations for unclassified technical data and defense services to member states of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.**

The provisions of § 124.8(5) of this subchapter notwithstanding, the Department may approve access to unclassified defense articles exported in furtherance of or produced as a result of a TAA/MLA, and retransfer of technical data and defense services to individuals who are dual national or third-country national employees of the foreign signatory or its approved sub-licensees, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign signatory or approved sub-licensees, provided they are nationals exclusively of countries that are members of NATO the European Union, Australia, Japan, New Zealand, and Switzerland and their employer is a signatory to the agreement or has executed a Non Disclosure Agreement. The retransfer must take place completely within the physical territories of these countries or the United States. Permanent retransfer of hardware is not authorized.

**PART 126—GENERAL POLICIES AND PROVISIONS**

- 6. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918; 59 FR 28205, 3 CFR, 1994 Comp. p. 899; Sec. 1225, Pub. L. 108–375.

**§§ 126.16 and 126.17 [Reserved]**

- 7. Add reserved §§ 126.16 and 126.17 and § 126.18 to read as follows:

**§ 126.18 Exemptions regarding intra-company, intra-organization, and intra-governmental transfers to employees who are dual nationals or third-country nationals.**

(a) Subject to the requirements of paragraphs (b) and (c) of this section and notwithstanding any other provisions of this part, and where the exemption provided in § 124.16 cannot be implemented because of applicable domestic laws, no approval is needed from the Directorate of Defense Trade Controls (DDTC) for the transfer of unclassified defense articles, which includes technical data (see § 120.6), to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user. The transfer of defense articles pursuant to this section must take place completely within the physical territory of the country where the end-user is located, where the governmental entity or international organization conducts official business, or where the consignee operates, and be within the scope of an approved export license, other export authorization, or license exemption.

(b) The provisions of § 127.1(b) are applicable to any transfer under this section. As a condition of transferring to foreign person employees described in paragraph (a) of this section any defense article under this provision, any foreign business entity, foreign governmental entity, or international organization, as a “foreign person” within the meaning of § 120.16, that receives a defense article, must have effective procedures to prevent diversion to destinations, entities, or for purposes other than those authorized by the applicable export license or other authorization (e.g., written approval or exemption) in order to comply with the applicable

provisions of the Arms Export Control Act and the ITAR.

(c) The end-user or consignee may satisfy the condition in paragraph (b) of this section, prior to transferring defense articles, by requiring:

(1) A security clearance approved by the host nation government for its employees, or

(2) The end-user or consignee to have in place a process to screen its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. The end-user or consignee must screen its employees for substantive contacts with restricted or prohibited countries listed in § 126.1. Substantive contacts include regular travel to such countries, recent or continuing contact with agents, brokers, and nationals of such countries, continued demonstrated allegiance to such countries, maintenance of business relationships with persons from such countries, maintenance of a residence in such countries, receiving salary or other continuing monetary compensation from such countries, or acts otherwise indicating a risk of diversion. Although nationality does not, in and of itself, prohibit access to defense articles, an employee who has substantive contacts with persons from countries listed in § 126.1(a) shall be presumed to raise a risk of diversion, unless DDTC determines otherwise. End-users and consignees must maintain a technology security/clearance plan that includes procedures for screening employees for such substantive contacts and maintain records of such screening for five years. The technology security/clearance plan and screening records shall be made available to DDTC or its agents for civil and criminal law enforcement purposes upon request.

Dated: April 26, 2011.

**Ellen O. Tauscher,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 2011-11697 Filed 5-13-11; 8:45 am]

**BILLING CODE 4710-25-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management, Regulation and Enforcement

#### 30 CFR Part 285

[Docket ID: BOEM-2010-0045]

RIN 1010-AD71

#### Renewable Energy Alternate Uses of Existing Facilities on the Outer Continental Shelf—Acquire a Lease Noncompetitively

**AGENCY:** Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises BOEMRE regulations that pertain to noncompetitive acquisition of an Outer Continental Shelf (OCS) renewable energy lease. We are taking this action because under the current regulations the process for acquiring a lease noncompetitively that is initiated by an unsolicited request is inconsistent with the process for acquiring a lease noncompetitively that is initiated by BOEMRE. By revising regulations which govern the lease acquisition process starting with submission of an unsolicited request, and regulations which govern the lease acquisition process starting with BOEMRE issuance of a Request for Interest (RFI) or a Call for Information and Nomination (Call), this rulemaking will make the two processes consistent with each other.

**DATES:** *Effective Date:* This final rule is effective June 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Timothy Redding at (703) 787-1219.

#### SUPPLEMENTARY INFORMATION:

##### Background

As originally written, § 285.231 allowed the award of a noncompetitive lease after BOEMRE received an unsolicited request for a noncompetitive lease if BOEMRE determined that there was no competitive interest after publishing a single notice of a request for interest relating to the unsolicited request for a noncompetitive lease. As originally written, § 285.232 provided that if BOEMRE published an RFI or Call resulting in a single expression of interest in a discrete portion within the RFI or Call area, BOEMRE could offer a lease for that area through a noncompetitive process only if it also issued a notice of request for interest as required by § 285.231(b) and subsequently determined that there was no competitive interest based on responses to that notice.

BOEMRE believes that the requirement for another notice following an RFI or Call was redundant and was at odds with the noncompetitive process prescribed for cases in which a party submitted an unsolicited request for an OCS renewable energy lease, where BOEMRE is required to publish only a single notice. The final rule revises § 285.232(c) to refer to the process outlined in § 285.231(d) through (i) rather than § 285.231(b) through (i), thereby eliminating this discrepancy by requiring only one RFI notice for determining competitive interest in all cases. This will make BOEMRE's leasing processes more streamlined and efficient while maintaining BOEMRE's obligations to notify the public of areas that may be leased, to solicit public input regarding those areas, and to determine whether competitive interest exists in acquiring leases in those areas.

#### Comments on the Proposed Rule

BOEMRE published a proposed rule on February 16, 2011 (76 FR 8962), and received a total of 76 comments.

The Offshore Wind Development Coalition, the National Hydropower Association, Offshore MW LLC, the American Wind Energy Association, and the National Wildlife Federation expressed support for revising the rule as proposed and endorsed BOEMRE's rationale for doing so.

The Alliance to Protect Nantucket Sound (APNS) and the Oceans Public Trust Initiative (OPTI) objected to revising the rule and objected to BOEMRE's rationale. The APNS stated that the proposed rule would promote a land rush attitude, diminish competition, and marginalize public review by shortening the environmental review process for OCS wind developers. The OPTI stated that it appears that the sole purpose for revising the regulations appears to be to make leasing move more quickly, which could be at the expense of more careful and balanced review. The OPTI also stated that revising the rule as proposed promotes collusion among industry participants. Defenders of Wildlife did not explicitly offer an opinion in favor of or in opposition to the proposed rule revision. However, it stated that, "In proposing to arbitrarily set a new criteria for an expedited accelerated permitting process solely on the basis of the number of applicants for a lease at a particular location, BOEMRE appears to ignore in this rulemaking any and all parameters that make a particular location unique \* \* \*."

BOEMRE received 68 comments from private citizens, 3 that expressed