

(1) For all vessels carrying any quantity of explosives with a mass explosive risk, up to a maximum of 2 tonnes (IMO Class 1, Division 1.1 and 1.5);

\* \* \* \* \*

(4) For all vessels carrying more than 100 tonnes and up to a maximum of 500 tonnes of safety explosives and shop goods (IMO Class 1, Divisions 1.4).

\* \* \* \* \*

28. In § 401.72, paragraphs (a), (e) introductory text, (e)(2), (f), and (h) would be revised, and paragraphs (e)(6) and (i) would be added to read as follows:

**§ 401.72 Reporting—explosive and hazardous cargo vessels.**

(a) Every explosive vessel or hazardous cargo vessel shall, when reporting information related to cargo as required by § 401.64(a), report the nature and tonnage of its explosive or hazardous cargo where applicable. Every vessel carrying grain which is under fumigation shall declare to the nearest traffic control center the nature of the fumigant, its properties and cargo holds affected.

\* \* \* \* \*

(e) Every vessel carrying dangerous cargo, as defined in § 401.66, and all tankers carrying liquid cargo in bulk, and all vessels carrying grain under fumigation shall, prior to transiting any part of the Seaway, file with the Manager a copy of the current load plan that includes the following information:

\* \* \* \* \*

(2) The approximate total weight in metric tonnes or total volume in cubic meters and the stowage location of each commodity;

\* \* \* \* \*

(6) Tankers in ballast shall report the previous cargo of each cargo hold on a plan as described in this paragraph (e).

(f) For tankers, the information required under this section shall be detailed on a plan showing the general layout of the tanks, and a midships cross-section showing the double bottom tanks and ballast side tanks.

\* \* \* \* \*

(h) Every vessel shall submit its load plan to the nearest Seaway Traffic Control Center from which it will be distributed to all other Seaway Traffic Control Centers. Any changes in stowage, including loading and discharging during a transit, the ship shall submit an updated plan before departing from any port between St. Lambert and Long Point.

(i) Failure to comply with the requirements in this section may result in unnecessary delays or transit refusal.

29. In § 401.74, paragraph (a) would be revised to read as follows:

**§ 401.74 Transit declaration.**

(a) A Seaway Transit Declaration Form (Cargo and Passenger) shall be forwarded to the Manager by the representative of a ship, for each ship that has an approved preclearance except non-cargo ships, within fourteen days after the vessel enters the Seaway on any upbound or downbound transit. The form may be obtained from The St. Lawrence Seaway Management Corporation, 202 Pitt Street, Cornwall, Ontario, K6J 3P7.

\* \* \* \* \*

30. In § 401.75, paragraph (b) would be revised to read as follows:

**§ 401.75 Payment of tolls.**

\* \* \* \* \*

(b) Tolls, established by agreement between Canada and the United States, and known as the St. Lawrence Seaway Schedule of Tolls, shall be paid by pleasure crafts with prepaid tickets purchased in Canadian funds using credit card ticket dispensers located at pleasure craft docks. At U.S. locks, the fee is paid in U.S. funds or the pre-established equivalent in Canadian funds.

31. Section 401.79 would be revised to read as follows:

**§ 401.79 Advance notice of arrival, vessels requiring inspection.**

Every vessel shall provide at least 96 hours notice of arrival to the nearest Seaway station prior to all transits or in case reinspection of the ship is required.

32. In § 401.81, paragraph (a) would be revised to read as follows:

**§ 401.81 Reporting an accident.**

(a) Where a vessel on the Seaway is involved in an accident or a dangerous occurrence, the master of the vessel shall report the accident or occurrence, pursuant to the requirements of the Transportation Safety Board Regulations, to the nearest Seaway or Canadian or U.S. Coast Guard radio or traffic stations, as soon as possible and prior to departing the Seaway system.

\* \* \* \* \*

33. In § 401.93, paragraph (b) would be revised to read as follows:

**§ 401.93 Access to Seaway property.**

\* \* \* \* \*

(b) Except as authorized by an officer or by the *Seaway Property Regulations* or its successors, no person shall enter upon any land or structure of the Manager or the Corporation or swim in any Seaway canal or lock area.

34. Section 401.94 would be revised to read as follows:

**§ 401.94 Keeping copies of regulations.**

(a) A copy of these Regulations (subpart A of Part 401), a copy of the vessel's latest Ship Inspection Report, and Seaway Notices for the current navigation year shall be kept on board every vessel in transit.

(b) Onboard every vessel transiting the Seaway a duplicated set of the Ship's Fire Control Plans shall be permanently stored in a prominently marked weather-tight enclosure outside the deckhouse for the assistance of shore-side fire-fighting personnel.

35. Section 401.95 would be revised to read as follows:

**§ 401.95 Compliance with regulations.**

The master or owner of a vessel shall ensure that all requirements of these Regulations and Seaway Notices applicable to that vessel are complied with.

Issued at Washington, DC, on January 18, 2005.

Saint Lawrence Seaway Development Corporation.

**Albert S. Jacques,**  
*Administrator.*

[FR Doc. 05-1264 Filed 1-24-05; 8:45 am]

BILLING CODE 4910-61-P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 262**

[FRL-7861-4]

**Project XL Rulemaking Extension for New York State Public Utilities; Hazardous Waste Management Systems; Proposed Rule**

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

**ACTION:** Proposed rule; change of expiration date.

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**SUMMARY:** EPA proposes to extend the Project XL Final Rule for New York State Public Utilities; Hazardous Waste Management Systems (XL Rule). The XL Rule was published as a final rule in the **Federal Register** on Monday, July 12, 1999 and, by its terms, expires, on January 10, 2005. The details of the XL Rule can be found in 64 FR 37636 (July 12, 1999). No further changes are being made to the XL Rule other than the change in expiration date. Because the requirements outlined in the XL Rule do not become effective until New York State adopts equivalent requirements through a State rulemaking and receives EPA authorization for these equivalent State requirements, EPA proposes to extend the XL Rule for a period of 72

months from the effective date of the rule resulting from today's proposal. To date, the State has not adopted an equivalent rule and thus the XL Project for New York Public State Utilities has not been implemented. The XL Rule must be extended to facilitate completion of the New York State Public Utilities XL Project.

**DATES:** Comments on the proposed extension of the XL Rule must be received on or before February 24, 2005.

**ADDRESSES:** Comments can be submitted electronically through the EPA's EDOCKET Web site (<http://docket.epa.gov/edkpub/index.jsp>). EDOCKET is EPA's online public docket and comment system designed to expand access to public information. The docket for this rulemaking will be open for comment under the "EPA Headquarters Materials Available for Comment" section of the Web site with the Docket ID of RCRA-2004-0021.

Written comments should be mailed to the EPA Docket Center (EPA/DC), RCRA Docket (5305T), 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number RCRA-2004-0021. A copy should also be sent to Mr. Philip Flax at U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866.

A docket containing public comments and supporting materials from the original final rulemaking is available for public inspection and copying at the EPA Docket Center (EPA/DC), located at EPA West Building, 1301 Constitution Avenue NW., Room B102, Washington, DC. The EPA/DC is open from 8:30 am to 4:30 pm Monday through Friday, excluding Federal holidays (All materials from this docket are available 24 hours a day online through the EDOCKET system with the new rulemaking's Docket ID of RCRA-2004-0021). The public is encouraged to phone in advance to review docket materials at the EPA/DC. Appointments can be scheduled by phoning the Docket Office at (202) 566-2270. Refer to RCRA docket number F-98-NYSP-FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007-1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637-4143. Information is also

available on the world wide web at <http://www.epa.gov/ProjectXL>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007-1866, (212) 637-4143.

**SUPPLEMENTARY INFORMATION:** On July 12, 1999, EPA promulgated subpart I of 40 CFR part 262 (XL Rule) which sets forth the requirements for Project XL for public utilities in New York State. The XL Rule was published as a final rule at 64 FR 37624 (July 12, 1999). The XL Rule expires on January 10, 2005. Accordingly, EPA is proposing to amend the expiration date of the XL Rule in 40 CFR 262.90(j). EPA is not proposing to modify any other provisions of the XL Rule.

EPA proposes to amend the expiration date of the XL Rule and provide an additional 72 months from the effective date of the rule resulting from today's proposal. An extension of the expiration date for the XL Rule will enable the New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory changes. New York State has received authority to administer hazardous waste standards for generators that are equivalent to, or more stringent than, the federal program. Therefore, the requirements outlined in the XL Rule will not take effect in New York State until the State adopts equivalent requirements through a State rulemaking and receives EPA authorization for these equivalent State requirements. EPA will not be the primary regulatory agency responsible for implementing the requirements of the XL Rule. EPA expects this XL Project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

#### Additional Information

##### 1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process

described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a State receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

##### 2. Effect on New York State Authorization

Today's proposed rule is promulgated pursuant to RCRA provisions that predate HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, today's rule will not be effective in New York State until the State adopts equivalent requirements as State law and receives EPA authorization for those equivalent State requirements. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

#### Statutory and Executive Order Review

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal 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 entitlement, grants, user fees, or loan programs of 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 the Executive Order.

Because the annualized cost of this rule will be significantly less than \$100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

#### *B. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. EPA proposes to extend the Project XL Final Rule for New York State Public Utilities; Hazardous Waste Management Systems (XL Rule) that was published on July 12, 1999, which will expire January 10, 2005. No other changes are being made to the XL Rule other than to change the expiration date by providing an additional 72 months

from the effective date of the rule resulting from today's proposal. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *C. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2010-0026.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is \$10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA amended the 40 CFR part 9 table of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in the XL Rule. The table lists the CFR citations for EPA's reporting and recordkeeping

requirements, and the current OMB control numbers. This listing of OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number or regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the

private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *E. Applicability of Executive Order 13045*

The Executive Order, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

#### *F. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This proposed rule does not have federalism implications. It 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, as specified in Executive Order 13132. This proposed rule does not create a mandate on State, local, or tribal governments and does not impose any enforceable duties on these entities. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically

solicits comment on this proposed rule from State and local officials.

#### *G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The rule does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

#### *H. Executive Order 13211: Energy Effects*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **List of Subjects in 40 CFR Part 262**

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

Dated: January 6, 2005.

**Stephen L. Johnson,**

*Deputy Administrator.*

For the reasons set forth in the preamble, part 262 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 262—[AMENDED]**

1. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 9612, 6922-6925, 6937, and 6938.

#### **Subpart I—[Amended]**

2. Section 262.90 is amended by revising paragraph (j) to read as follows:

#### **§ 262.90 Project XL for Public Utilities in New York State.**

\* \* \* \* \*

(j) This section will expire on \_\_\_\_ [72 months from effective date].

[FR Doc. 05-822 Filed 1-24-05; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To List *Bromus arizonicus* (Arizona brome) and *Nassella cernua* (nodding needlegrass) as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day petition finding for petitions to list *Bromus arizonicus* (Arizona brome) and *Nassella cernua* (nodding needlegrass) under the Endangered Species Act of 1973, as amended. We find that neither petition presented substantial scientific or commercial information indicating that listing one or both of these species may be warranted. We will not be initiating a further status review in response to the petitions to list.

**DATES:** The finding announced in this document was made January 7, 2005.

**ADDRESSES:** Data, information, written comments and materials, or questions concerning these petitions and findings should be submitted to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA