

*Using agency.* New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

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#### **6. R-5002F Warren Grove, NJ [New]**

*Boundaries.* Beginning at lat. 39°43'25" N., long. 74°17'36" W.; to lat. 39°40'10" N., long. 74°20'14" W.; to lat. 39°38'50" N., long. 74°21'19" W.; to lat. 39°38'25" N., long. 74°22'05" W.; to lat. 39°38'25" N., long. 74°24'19" W.; to lat. 39°38'30" N., long. 74°29'29" W.; to lat. 39°39'20" N., long. 74°29'59" W.; to lat. 39°44'50" N., long. 74°24'39" W.; to lat. 39°44'50" N., long. 74°19'19" W.; to the point of beginning.

*Designated altitudes.* 14,000 feet MSL to but not including FL 200.

*Time of designation.* Sunrise to sunset; other times as activated by NOTAM issued at least 48 hours in advance.

*Controlling agency.* FAA, New York ARTCC.

*Using agency.* New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

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#### **7. R-5002G Warren Grove, NJ [New]**

*Boundaries.* Beginning at lat. 39°49'02" N., long. 74°00'45" W.; to lat. 39°38'18" N., long. 74°12'34" W.; to lat. 39°38'25" N., long. 74°22'05" W.; to lat. 39°38'25" N., long. 74°24'19" W.; to lat. 39°38'30" N., long. 74°29'29" W.; to lat. 39°39'20" N., long. 74°29'59" W.; to lat. 39°44'50" N., long. 74°24'39" W.; to lat. 39°49'02" N., long. 74°16'18" W.; to point of beginning.

*Designated altitudes.* FL 200 to FL 230.

*Time of designation.* Sunrise to sunset; other times as activated by NOTAM issued at least 48 hours in advance.

*Controlling agency.* FAA, New York ARTCC.

*Using agency.* New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

Issued in Washington, DC, on December 5, 2011.

**Gary A. Norek,**  
Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011-31853 Filed 12-12-11; 8:45 am]

**BILLING CODE 4910-13-P**

located in West Winfield, Herkimer County, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final Notice of Deletion is being published by EPA with the concurrence of the State of New York, through the New York State Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that all appropriate response actions under CERCLA, other than monitoring and maintenance (M&M) and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion will be effective February 13, 2012 unless EPA receives significant adverse comments by January 12, 2012. If significant adverse comments are received, EPA will publish a timely withdrawal of this direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1999-0013, by one of the following methods:

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

*Email:* [mongelli.thomas@epa.gov](mailto:mongelli.thomas@epa.gov).

*Fax:* To the attention of Thomas Mongelli at (212) 637-3966.

*Mail:* To the attention of Thomas Mongelli, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007-1866.

*Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007-1866 (telephone: (212) 637-4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID no. EPA-HQ-SFUND-1999-0013. EPA's policy is that all comments received will be included in the Docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or via email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via email, your email address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD-ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

*Docket:* All documents in the Docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available Docket materials can be viewed electronically at <http://www.regulations.gov> or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007-1866, *Phone:* (212) 637-4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m.

and

West Winfield Library, Bisby Hall, 179 South Street, West Winfield, NY 13491, *Phone:* (315) 822-6394, *Hours:* Monday, Tuesday, Thursday, and Friday from 12:30-5:30 p.m., Wednesday from 10 a.m.-12 p.m. and 6-8 p.m., and Saturdays from 10 a.m.-12 p.m. (Sept.-May).

#### **FOR FURTHER INFORMATION CONTACT:**

Thomas Mongelli, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007-1866; telephone at (212) 637-4256; fax at (212) 637-3966; or email at [mongelli.thomas@epa.gov](mailto:mongelli.thomas@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 300**

**[EPA-HQ-SFUND-1999-0013; FRL-9503-9]**

#### **National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hiteman Leather Superfund Site**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA, Region 2, is publishing a direct final Notice of Deletion of the Hiteman Leather Superfund Site (Site),

## Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion
- V. Deletion Action

### I. Introduction

EPA Region 2 is publishing this direct final deletion of the Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in Section 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective February 13, 2012 unless EPA receives significant adverse comments by January 12, 2012. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to delete the Site in the “Proposed Rules” section of today’s **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

Section II below explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA’s action to delete the Site from the NPL unless significant adverse comments are received during the public comment period.

### II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where there is no risk posed or no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will

consider, in consultation with the state, whether any of the following criteria have been met:

- i. Responsible parties or other parties have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

### III. Deletion Procedures

The following procedures apply to deletion of the Site.

(1) EPA consulted with the State of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete also published today in the “Proposed Rules” section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the NYSDEC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *The Observer Dispatch* (Utica). The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the Docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments. If appropriate, EPA may then continue with the deletion process based on the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual’s rights or obligations. Deletion of a site from the NPL does not in any way alter EPA’s right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA’s management of sites. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

### IV. Basis for Site Deletion

The following summary provides the Agency’s rationale for deleting the Site from the NPL.

#### Background

The Site includes a former tannery and leather manufacturing facility located in the Village of West Winfield, New York at 173 South Street (Route 51) just south of the intersection of Route 51 with State Highway Route 20. The former tannery property, currently owned by the Village of West Winfield, is bordered to the north by commercial buildings and residences, to the east by South Street, to the south by a residential property, to the southwest by a landlocked, privately-owned 2-acre parcel, and to the west by the West Winfield Cemetery. The Site is approximately 12 acres in size and is traversed by approximately 800 feet of the Unadilla River. Ten acres are located on the northern bank of the river and 2 acres are located on the southern bank.

A tannery business was established at the Site in 1820 on the northern bank of the Unadilla River by a Mr. Adsit. In 1910, after several changes in ownership, the tannery business was acquired by the Hiteman family and the name of the business was later changed to the Hiteman Leather Company. In 1922, the company was reorganized as a corporation under the name of Hiteman Leather Company, Inc., and the name remained unchanged until the termination of the business in 1968.

In the leather tanning process, animal hides and skins absorb chemicals that prevent the resulting leather from decaying, make it resistant to wetting,

and keep it supple and durable. In the early years, tree bark extract containing tannins was used, but in later years, chromium salts were also used. Waste from tannery operations at the Site was originally discharged from the tannery buildings directly to the Unadilla River. During operation under the Hiteman family, the tannery and tannery property experienced many changes over the years to expand business and increase production, including a major change during the early 1900s to incorporate chromium-based tanning into the process. The chromium-based process, in combination with mechanization, reduced the time to manufacture leather from years to weeks; however, the wastes that were generated were more toxic and far more voluminous, resulting in the construction of two unlined lagoons in 1931 and a third unlined lagoon in 1959. Berms were constructed around the lagoons to increase their capacity.

Wastewater was discharged via a sluiceway to the lagoons. The wastewater lagoons reportedly discharged to the Unadilla River and to the wetland area to the northwest of the lagoons (which ultimately drains to the Unadilla River). Wastewater from the coloring process was discharged into two 240-cubic foot concrete dye tanks prior to being discharged to the Unadilla River. Sludge from the bottom of the lagoons was periodically dredged and was reportedly deposited as berm material surrounding the lagoons.

The inability to economically treat contaminated wastewater from the tannery forced the closing of tannery operations at the Site in 1968. The real property and buildings were sold in 1969 to Erle Davis of Clinton, New York, who subsequently rented the buildings in the 1970s, mostly for storage, to various small businesses including a cookie company and a tire company. The former tannery buildings were no longer occupied after 1982 and they gradually deteriorated.

In 1985, NYSDEC added the Site to its Registry of Inactive Hazardous Waste Disposal Sites and, thereafter, from 1988 to 1992, conducted environmental investigations of the Site that resulted in the Site being referred to EPA for further evaluation. In 1994, EPA performed some preliminary sampling at the former tannery property and fenced the northern part of the Site to prevent unauthorized access, particularly to the deteriorating buildings.

In 1996, EPA conducted a Site Investigation (SI) that found elevated concentrations of chromium in the surface soil, subsurface soils, and surface water. Several other

contaminants were detected at low levels in soils, including metals, pesticides, semi-volatiles, and volatiles. The SI also found asbestos-covered pipes throughout the main former tannery building and determined that the wood-frame sections of the building were structurally unsound.

Based upon the SI, EPA conducted an asbestos removal pursuant to CERCLA and demolished the wood frame sections of the building, power house, and chimney stack in 1996. The remaining concrete and steel building was demolished by the Davis estate in 1998, with the latter demolition leaving piles of loose brick and concrete debris, as well as other concrete remnants (e.g., building pillars, concrete dye tanks, etc.). Much of the loose debris was removed from the concrete foundation floor by EPA in May 2001 to facilitate sampling under the floor.

The Site was proposed to the NPL in March 1998 (63 FR 51882) and listed on the NPL in January 1999 (64 FR 2942).

In 2003, EPA awarded a \$100,000 Federal grant to the Village of West Winfield to develop a reuse assessment and redevelopment plan for the Hiteman Leather site as part of the EPA's Superfund Redevelopment Initiative, a nationally coordinated effort to restore toxic waste sites to productive reuse. The Village's reuse assessment and redevelopment plan calls for the construction of a community center, development of recreational facilities, consolidation and modernization of the existing Department of Public Works facility, and commercial development.

#### *Remedial Investigation and Feasibility Study*

EPA conducted a remedial investigation and feasibility study (RI/FS) at the Site from 2001–2006. The findings are presented in an RI report and FS report. The results of the RI indicated that metals were the predominant contaminants in the soils in the northern 10 acres of the Site and in sediments in the wetland and in the Unadilla River. While carcinogenic risks were found to be within acceptable risk ranges, the results of the risk assessment indicated that former tannery property soil hot spots presented unacceptable increased non-cancer hazards. Contaminated soils along the river on the former tannery property area and contaminated wetland and river sediments posed unacceptable ecological risks. In addition, inorganic groundwater concentrations in the semi-confining unit exceeded their respective federally recognized Maximum Contaminant Levels, thereby posing a potential human health risk. Although a

number of organic compounds were detected in the groundwater at the Site, they appear to be incidental, were found only infrequently and at relatively low concentrations, and could not be attributed to tannery operations. In addition, some of the organics appear to be from an upgradient source. The contaminants of concern identified for the Site include antimony, arsenic, cadmium, chromium, hexavalent chromium, lead, manganese, mercury, and nickel.

#### *Selected Remedy*

Based upon the results of the RI/FS, on September 28, 2006, a Record of Decision (ROD) was signed, selecting a remedy for the Site. The selected remedy included the excavation of contaminated soil from the former tannery property; excavation of contaminated riverbank soils; excavation/dredging of contaminated wetland and river sediments located adjacent to the former tannery property; treatment by solidification (the addition of cement additives to change the physical and chemical characteristics in order to immobilize contaminants) and consolidation of the excavated/dredged soils and sediments on the former tannery property; placement of a soil cover; and intermittent groundwater extraction and treatment. The ROD also indicated that the need for the remediation of river sediments in areas downstream of the former tannery would be determined based upon post-remediation sediment chemical analyses, sediment toxicity testing, and analysis of benthic macroinvertebrate communities. In addition, an environmental easement/restrictive covenant would be filed to restrict the future land use of the Site, and a Site Management Plan (SMP) would provide for the proper management of all post-construction remedy components.

The following remedial action objectives were established for the Site:

- Reduce or eliminate any direct contact, ingestion, or inhalation threat to future recreational users or construction workers to contaminated soils and sediments;
- Minimize exposure of wildlife or fish to contaminated soils and sediments;
- Protect human health by preventing exposure of future users to contaminated groundwater; and
- Restore groundwater to levels that meet state and Federal standards within a reasonable time frame.

#### *Response Actions*

Based upon the results of additional testing at the Site during the design, it

was determined, that the excavated Site soils and sediments did not require treatment prior to on-Site consolidation and containment as called for in the ROD.

The ROD also called for the excavation of a metals-contaminated strip along the top of the northern bank of the river to protect ecological resources. As part of plans to redevelop the Site, a walkway was placed along the top of the northern bank. Since the soils that would underlie the walkway would not be accessible to ecological receptors, the width of the area requiring excavation was changed. The remaining soil was to be covered with two feet of clean material.

The ROD identified the cleanup goal for manganese for the Site to be that level found to be present in the vicinity of the Site, or background. Based upon the results of more representative soil sampling in the area, the average background concentration for manganese was found to be higher than originally determined. The cleanup goal for manganese was changed to the updated higher average background concentration.

The above-noted changes to the remedy, which were documented in a June 2008 Explanation of Significant Differences (ESD), were incorporated into the soil and sediment design.

EPA, through its contractor, mobilized to the Site on May 5, 2008. During the course of the five-month construction effort, 16,000 cubic yards of contaminated soil, 8,700 cubic yards of contaminated wetland sediments, and 200 cubic yards of contaminated riverbank soils and sediments at the toe of the riverbank were excavated and consolidated in low-lying areas of the Site. A geomembrane liner and two-foot thick soil cover were placed over the consolidated soils and sediments. In addition, in areas where residual soil contamination exceeded the cleanup objectives, a soil cover with a thickness of two feet was placed in areas with "active" exposure potential (e.g., playing fields) and a thickness of one foot in areas with "passive" exposure potential (e.g., walking trails, parking lots). The "active" and "passive" areas were based on the future-use plan prepared by the Village of West Winfield. Approximately 7 acres of the Site (upland and the soil and sediment disposal area) was covered with a two-foot soil cover and 1.5 acres (building foundation) was covered with a one-foot cover.

The ROD indicated that the extent, if necessary, for the remediation of river sediments in areas downstream of the former tannery would be determined

based upon post-remediation sediment and ecological sampling.

The results of these investigations suggest that there are no discernable downstream impacts to the Unadilla River ecosystem from the Site. Therefore, the downstream sediments were determined not to need remediation. In order to measure the success that the remediation of Site soils and sediments has had on downstream ecological receptors, downstream sediment (chemical analysis) and ecological monitoring was conducted for three years. The results of these monitoring events are discussed in the "Cleanup Goals" section below.

During the RI, groundwater samples collected from the bedrock aquifer never exceeded groundwater standards. While there were groundwater exceedances in the shallow aquifer during early RI sampling rounds, these samples were highly turbid. Subsequent samples with lower turbidity did not exceed groundwater standards. Groundwater standards for inorganics were, however, exceeded in the semi-confining unit, which is located between the shallow and bedrock aquifers. Since similar contaminants were also present in Site soils, this contamination was believed to be Site-related. As a result of these findings, the ROD called for the extraction and treatment of contaminated groundwater on an intermittent basis from the semi-confining unit.

Based upon the results of sampling conducted during the design phase, it was concluded that the contamination present in the semi-confining unit is not related to disposal activities at the Site (i.e., the contamination is naturally occurring). Based upon these findings, it was determined the contaminated groundwater would not be extracted and treated. These above-noted changes to the remedy were documented in a second ESD, issued in September 2008.

Based on the results of an EPA and NYSDEC pre-final inspection on September 30, 2008, a Preliminary Close-Out Report was approved on September 30, 2008.

A Remedial Action (RA) Report was approved by EPA in March 2009. The RA Report documented that the work was performed in accordance with the approved design, consistent with the decision documents and that appropriate construction standards and quality assurance/quality control procedures were used.

The ROD required the imposition of institutional controls to restrict the future development/use of the Site where contaminated sediments and soils were consolidated, prohibit

excavation below the soil cover unless the activities are in accordance with an SMP, and restrict the use of groundwater. An Environmental Easement effecting such restrictions was recorded with the Herkimer County Clerk on July 22, 2010.

The ROD called for the development of an SMP to provide for the proper management of all post-construction remedy components. The SMP was issued on December 29, 2010.

On September 9, 2010, a final inspection was conducted by EPA and NYSDEC. Based on the results of this inspection, it has been determined that the construction for the entire Site had been completed and that the remedy as implemented was consistent with the ROD, as modified by the two ESDs.

#### Monitoring and Maintenance

Post-construction M&M activities at the Site called for in the SMP are being performed by NYSDEC and the Village of West Winfield. NYSDEC has entered into a Transfer Agreement (October 13, 2011) with EPA. The Site maintenance activities will be performed at three areas of the Site: Upland Area; Wetland Area; and Riverbank Area.

#### Five-Year Review

Hazardous substances remain at this Site above levels that would allow for unlimited use and unrestricted exposure. Therefore, pursuant to CERCLA Section 121(c), EPA is required to conduct a review of the remedy at least once every five years. The first five-year review will be performed before May 2013, which is five years following the initiation of construction.

#### Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA Sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. As part of the remedy selection process, the public was invited to comment on the proposed remedy. All other documents and information that EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

#### Determination That the Site Meets the Criteria for Deletion From the NCP

All of the completion requirements for this Site have been met, as described in the September 13, 2011 Final Close-Out Report. The State of New York, in a September 21, 2011 letter, concurred with the proposed deletion of this Site from the NPL.

The NCP specifies that EPA may delete a site from the NPL if "all

appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.” 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New York, through NYSDEC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

#### **V. Deletion Action**

EPA, with the concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA, other than M&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL. Because EPA considers this action to be noncontroversial and routine, EPA is taking this action without prior publication. This action will be effective February 13, 2012 unless EPA receives adverse comments by January 12, 2012. If adverse comments are received within the 30-day public comment period of this action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

#### **List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 22, 2011.

**Judith A. Enck,**  
Regional Administrator, EPA, Region 2.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing “Hiteman Leather,” “West Winfield”, “NY.”

[FR Doc. 2011-31912 Filed 12-12-11; 8:45 am]

**BILLING CODE 6560-50-P**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **45 CFR Part 156**

**[CMS-9983-F]**

**RIN 0938-AQ98**

#### **Patient Protection and Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO-OP) Program**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Consumer Operated and Oriented Plan (CO-OP) program, which provides loans to foster the creation of consumer-governed, private, nonprofit health insurance issuers to offer qualified health plans in the Affordable Insurance Exchanges (Exchanges). The goal of this program is to create a new CO-OP in every State in order to expand the number of health plans available in the Exchanges with a focus on integrated care and greater plan accountability.

**DATES:** These regulations are effective February 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Meghan Elrington, (301) 492-4388 for general issues and issues related to loan terms and governance standards. Anne Bollinger, (301) 492-4395 for issues related to definitions and eligibility.

Ilana Cohen, (301) 492-4371 for issues related to CO-OP standards.

**SUPPLEMENTARY INFORMATION:** The Patient Protection and Affordable Care Act, (Pub. L. 111-148), enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), enacted on March 30, 2010, are collectively referred to in this final rule as the “Affordable Care Act.” The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10), which amended Section 1322 of the Affordable Care Act, was enacted on April 15, 2011. Section 1322 of the Affordable Care Act created the Consumer Operated and Oriented Plan program (CO-OP) to foster the creation of new consumer-governed, private, nonprofit health insurance issuers. In addition to improving consumer choice

and plan accountability, the CO-OP program also seeks to promote integrated models of care and enhance competition in the Affordable Insurance Exchanges (Exchanges) established under the Affordable Care Act.

The statute authorizes the Secretary to make loans to capitalize eligible prospective CO-OPs with a goal of having at least one CO-OP in each State. It also permits the funding of multiple CO-OPs in any State, provided that there is sufficient funding to capitalize at least one CO-OP in each State. There is \$3.8 billion in appropriations for the program.

All CO-OP loans must be repaid with interest, and loans will only be made to private, nonprofit entities that demonstrate a high probability of becoming financially viable. The CO-OP program contains extensive provisions to protect against fraud, waste, and abuse. Loan recipients are subject to strict monitoring, audits, and reporting requirements for the length of the loan repayment period plus 10 years and CO-OPs must meet a series of milestones before drawing down disbursements, as described in their loan agreements.

This final rule—(1) Sets forth the eligibility standards for the CO-OP program; (2) establishes terms for loans; and (3) provides basic standards that organizations must meet to participate in this program and become a CO-OP. This rule is intended to provide flexibility for eligible organizations to encourage diversity in the organizational design and approach while ensuring that the statutory goals are met.

Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges (Exchanges). Insurance companies will compete for new business on the basis of price and value and consumers will have a choice of health plans to fit their needs. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) are seeking public input, providing guidance, and issuing regulations implementing Exchanges in several phases. A Request for Comment relating to Exchanges was published in the **Federal Register** on August 3, 2010. Initial Guidance to States on Exchanges was published on November 18, 2010. A proposed rule for the application, review, and reporting process for waivers for State innovation was published in the **Federal Register** on March 14, 2011 (76 FR 13553). On July 15, 2011, two proposed regulations were