

England Regional Office listed in the **ADDRESSES** section of this action.

Comments must be received on or before February 11, 2003. Comments received after this date will be considered late. EPA is not required to consider late comments.

## VI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 10, 2003.

**Robert W. Varney**,  
Regional Administrator, EPA New England.  
[FR Doc. 03-1239 Filed 1-17-03; 8:45 am]  
**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7440-1]

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete a portion of the Former Nansmond Ordnance Depot Site from the National Priorities List.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) Region III announces its intent to delete soil in the Impregnation Kit Area of the Former Nansmond Ordnance Depot site (Nansmond) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant

to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA and the Commonwealth of Virginia (Commonwealth), acting through the Department of Environmental Quality, have determined that all appropriate CERCLA response actions have been implemented for the soil and that no further action for soil is appropriate. This partial deletion pertains only to the soil in the Impregnation Kit Area and does not include the ground water beneath the Impregnation Kit Area, nor any other portion of Nansmond.

**DATES:** EPA will accept comments concerning its proposal for partial deletion until February 20, 2003, and publication of a notice of availability of this document in a newspaper of record.

**ADDRESSES:** Comments may be submitted to Mr. Robert Thomson, PE, Remedial Project Manager, U.S. EPA, Region III (3HS13), 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, Telephone: (215) 814-3357, e-mail [thomson.bob@epa.gov](mailto:thomson.bob@epa.gov).

#### Information Repositories:

Comprehensive information on the Nansmond site, information specific to this proposed partial deletion, the Administrative Record and the Deletion Docket for this partial deletion are available for review at the following Nansmond document/information repositories:

Tidewater Community College  
(Frederick Campus) Library,  
Information Desk, 7000 College Drive,  
Portsmouth, Virginia 23703, (757)  
822-2130, Hours of Operation:  
Monday through Thursday 8 a.m. to 9  
p.m., Friday 8 a.m. to 4:30 p.m. and  
Saturday 9 a.m. to 1 p.m.  
U.S. EPA Region III Library, 1650 Arch  
Street, Philadelphia, PA 19103-2029,  
(215) 814-5254, Hours of Operation:  
Monday through Friday 8 a.m.-5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Thomson, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3357, e-mail [thomson.bob@epa.gov](mailto:thomson.bob@epa.gov).

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### I. Introduction

The United States Environmental Protection Agency (EPA) Region III announces its intent to delete a portion of the Former Nansmond Ordnance Depot site (Nansmond) located in

Suffolk, Virginia from the National Priorities List (NPL) and requests comments on this proposal. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. This proposal for partial deletion pertains to the soil in the Impregnation Kit Area of Nansemond.

Nansemond is located in Suffolk, Virginia, near the northwestern end of State Route 135. It was once a U.S. military facility. It is situated at the mouth of and to the east of the Nansemond River, on the south side of Hampton Roads, and contains approximately 975 acres. It is bordered to the west by the Nansemond River, to the north by the James River (Hampton Roads) and to the east by Streeter Creek.

The Impregnation Kit Area (also known as the "Impregnite Kit" or "XXCC3" area) is an approximately 300,000 square foot, rectangular area in the southwestern portion of Nansemond, about 1000 feet from the Nansemond River. Only soil in this area is proposed for deletion from the NPL; ground water beneath the Impregnation Kit Area is not proposed for deletion.

The U.S. Department of the Army apparently disposed of "impregnation" or "impregnite" kits in this area. Impregnation kits consist of two substances: (a) XXCC3, which is a fine, white, granular, crystal powder consisting of 90–92% octachlor carbonilide ( $C_{13}H_4Cl_8N_2O$ ) and 8–10% zinc oxide, and (b) a "honey-like syrup" or "black waxy material." XXCC3 was used to neutralize chemical agents, and the impregnation kits disposed of in the Impregnation Kit Area were probably used as a protective coating on an undergarment for older military issue chemical suits. EPA found several hazardous substances in the soil of the Impregnation Kit Area at concentrations greater than background concentrations, including zinc (11,100 milligrams per kilogram), carbon tetrachloride (20,700 micrograms per kilogram (ug/kg)), chloroform (20,600 ug/kg), and TNT (279 ug/kg).

A contractor for the United States Army Corps of Engineers (the Corps) removed the buried kits and surrounding contaminated soil in December 1998 and January 1999. In all, the contractor removed 857 tons of impregnation kits and associated soil. Confirmation sampling shows that the contractor successfully removed the impregnation kits and associated contaminated soil. In the process, the Corps and EPA found that disposal activities and associated soil contamination were limited to a circle approximately 270 feet in diameter,

covering 57,255 square feet, rather than 300,000 square feet, as originally estimated in EPA's Final Hazard Ranking System ("HRS") Package. No further response action is appropriate to protect human health, welfare, and the environment in relation to the soil in the Impregnation Kit Area (all 300,000 square feet) and, therefore, EPA proposes to delete the soil in this area from the NPL.

Ground water beneath the Impregnation Kit Area has not been fully characterized and is not proposed for deletion from the NPL. Although some sampling and evaluation has been completed, more study is needed to better understand whether the ground water is contaminated and, if so, to what extent. Hazardous substances, including explosives, have been detected in ground water at other locations within Nansemond. It has not been clearly demonstrated that hazardous substances, pollutants or contaminants have been, or continue to be, released into the ground water beneath the Impregnation Kit Area at levels of concern to human health or the environment. Data gathered so far do not appear to indicate unacceptable human health threats from ground water beneath the Impregnation Kit Area, except perhaps if used for drinking water. Accordingly, the present owner of the property has agreed to prohibit drinking of ground water beneath the Impregnation Kit Area through a restrictive covenant, or similar legal device, in a deed. In addition, a City of Suffolk ordinance, section 90–126, requires all new premises, buildings or dwellings abutting a city water main to connect to the water main. This means that, under current law, any new buildings on the Impregnation Kit Area would connect to the city water main, reducing the likelihood that people would choose to drill wells and use ground water beneath the Impregnation Kit Area. The EPA and Corps plan future investigations to determine whether the ground water beneath the Impregnation Kit Area, and other areas within Nansemond, poses a risk to human health or the environment.

## II. NPL Deletion Criteria

This partial deletion is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (November 1, 1995). 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 no further response is appropriate to protect public health or

the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the Commonwealth, whether any of the following criteria have been met:

- Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or
- Section 300.425(e)(1)(ii). All appropriate responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent CERCLA actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that CERCLA actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

## III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke a person's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. The following procedures were used for the proposed deletion of the soil in the Impregnation Kit Area at Nansemond:

1. In December 1998 and January 1999, a contractor for the U.S. Army Corps of Engineers removed impregnation kits and associated contaminated soil from the Impregnation Kit Area. Subsequent soil sampling confirmed that the kits and contaminated soil had been successfully removed. Residual concentrations of hazardous substances, pollutants and contaminants in the soil are less than EPA Region III's Risk-Based Concentrations for soil in residential use and less than concentrations that might contaminate ground water, with the exception of arsenic. The arsenic concentrations, however, are within the range of concentrations that occurs naturally in the soil in this region of Virginia. A geophysical investigation of the Impregnation Kit Area and 20

adjacent acres found no ordnance, no explosives and only one piece of ordnance-related scrap. Based on this, EPA and the Corps believe that no further response action is appropriate for soil in the Impregnation Kit Area.

2. EPA has recommended the partial deletion and the Corps and EPA have prepared the relevant documents. These documents have been compiled into a Deletion Docket.

3. The Commonwealth of Virginia, through the Virginia Department of Environmental Quality, concurs with this partial deletion.

4. Concurrent with this national notice of intent for partial deletion, a notice has been published in a local newspaper of record and has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a 30 day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and publication of a notice of availability of this notice in a newspaper of record.

5. EPA and the Corps have made all relevant documents available at the information repositories listed previously.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announce the initiation of a 30 day public comment period and the availability of the notice of intent for partial deletion. The public is asked to comment on EPA's proposal to delete the soil in the Impregnation Kit Area of Nansmond from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the 30 day comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region III to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the area does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

#### IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the soil in the Impregnation Kit Area from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

##### *Background*

The Former Nansmond Ordnance Depot site (Nansmond) is located in Suffolk, Virginia, near the northwestern end of State Route 135. It was once a U.S. military facility. It is situated at the mouth of and to the east of the Nansmond River, on the south side of Hampton Roads, and contains approximately 975 acres. It is bordered to the west by the Nansmond River, to the north by the James River (Hampton Roads) and to the east by Streeter Creek.

From its establishment in 1917 until 1950, Nansmond was occupied by the U.S. Army for ammunition supply, maintenance, and disposal functions. In 1950, the site was transferred to the Department of the Navy, and was subsequently named the Marine Corps Supply Forwarding Annex. Following Navy operation, Nansmond was deactivated in 1960, and ownership of the property was transferred to the Beazley Foundation. The land of the former depot is now principally occupied by Tidewater Community College; the General Electric Company Jet Engine Division (GE); and the Hampton Roads Sanitation District (HRSD). Smaller parcels of land are owned by the Virginia Department of Transportation, Interstate 664; Dominion Lands, Inc.; Continental Properties; and SYSCO Food Services.

Soil and ground water at Nansmond have been contaminated by past operations, including the storage, handling, reconditioning and disposal of ordnance. Types of contamination at Nansmond include, but are not limited to, semi-volatile organic compounds, heavy metals and compounds used in explosives (*e.g.*, TNT) in soil; and compounds used in explosives (*e.g.*, hexahydro-1,3,5-trinitro-1,3,5-triazine ("RDX")) in ground water.

Nansmond is classified as a "Formerly Used Defense Site" or "FUDS." Pursuant to Public Law 98-212 and the Defense Environmental Restoration Program (chapter 160 of the Superfund Amendments and Reauthorization Act of 1986), the Department of Defense (DOD) is responsible for investigating and remedying releases of hazardous substances at FUDS that resulted from DOD activities. DOD has assigned those

responsibilities to the United States Army Corps of Engineers (the Corps).

Environmental contamination from past military operations at Nansmond came to the attention of the Corps and EPA at least as early as 1987, when a boy found a piece of crystalline TNT near the entrance to Tidewater Community College. Beginning in 1987 and continuing to the present, the Corps and EPA have cooperated to remove TNT, buried ordnance and other contamination from soil at Nansmond. In addition, the Corps and EPA have cooperated in investigating soil and ground water contamination at Nansmond.

##### *Impregnation Kit Area*

The Impregnation Kit Area (also known as the Impregnite Kit or XXCC3 area) is an approximately 300,000 square foot, rectangular area in the southwestern portion of Nansmond, about 1000 feet from the Nansmond River. It was apparently used for the disposal of impregnation kits containing XXCC3. Impregnation kits consist of two substances: (a) XXCC3, which is a fine, white, granular, crystal powder, and (b) a "honey-like syrup" or "black waxy material." XXCC3 was used to neutralize chemical agents, and the impregnation kits disposed of in this area were probably used as a protective coating on an under garment for older military issue chemical suits.

As of 1948, the U.S. Army's recommended methods for disposal of surplus XXCC3 included scattering on the ground, burial (at least three feet below ground), and burning. Aerial photographs indicate that activities such as excavating and grading took place at the Impregnation Kit Area during the 1950s. A 1995 excavation by a contractor for Dominion Lands, Inc. uncovered wooden crates containing the white powder; small metal cans containing the black waxy material; and fiber drums. In 1996, the Corps conducted a chemical screening and ordnance survey in the Impregnation Kit Area, took soil samples and dug test pits. The test pits revealed a thick seam of the white powder in a mounded area, and remnants of the kits were visible.

EPA took a soil sample from the Impregnation Kit Area in 1997. The hazardous substances detected at the highest concentrations in this sample were zinc (11,100 milligrams per kilogram), carbon tetrachloride (20,700 micrograms per kilogram ( $\mu\text{g}/\text{kg}$ )), chloroform (20,600  $\mu\text{g}/\text{kg}$ ), and TNT (279  $\mu\text{g}/\text{kg}$ ).

In December 1998 and January 1999, a contractor for the Corps excavated the area containing the impregnation kits.

Two parallel disposal trenches were discovered. A total of 857 tons of impregnation kit materials and associated soils were removed and placed in a landfill in Hampton, Virginia. Earlier analytical testing indicated that the soils and materials removed from the Impregnation Kit Area were not a RCRA hazardous waste according to 40 CFR part 261.3 and the Material Safety Data Sheet for XXCC3. All waste was disposed of in a non-hazardous waste landfill in Hampton, Virginia.

Following the removal, in January 1999, EPA proposed to add releases of hazardous substances, pollutants and contaminants at Nansemond to the National Priorities List (NPL). 64 FR 2950 (January 19, 1999). EPA added the releases to the NPL in July 1999. 64 FR 39878 (July 22, 1999). One of the supporting documents, the Hazard Ranking System (HRS) Documentation Record, described the Impregnation Kit Area as one of seven sources of contamination at Nansemond, based on the soil sample taken in 1997. EPA also noted, however, that "The rectangular parcel, identified as Source Area 3 [the Impregnation Kit Area] in the HRS Documentation Record, has undergone extensive removal activities and EPA anticipates that confirmation sampling will indicate that this area also is not of concern to EPA." At the time it drafted the HRS Documentation Record, EPA estimated the Impregnation Kit Area covered approximately 300,000 square feet.

In the summer of 1999, a contractor for the Corps took samples of the soil in the Impregnation Kit Area to confirm that the excavation had successfully removed contaminated soil and to check for hazardous substances, pollutants and contaminants in 20 acres surrounding the excavation. The contractor also performed a geophysical investigation to identify geophysical anomalies that might indicate ordnance buried in the Impregnation Kit Area.

The Confirmation Sampling Report shows that the excavation successfully removed the impregnation kits and associated contaminated soil. Residual concentrations of hazardous substances, pollutants and contaminants in soil samples were less than EPA Region III's Risk-Based Concentrations for residential use, and less than concentrations that might contaminate ground water, except that all the soil samples contained arsenic, at levels up to 4.6 mg/kg. These arsenic concentrations, however, are within the range of naturally occurring background concentrations for soils in this region of Virginia. Under CERCLA, the Corps and

EPA generally do not clean up naturally occurring substances in their unaltered form (or altered solely through naturally occurring processes) from locations where they are naturally found.

The geophysical investigation found 16 geophysical anomalies. However, after excavating each location, the anomalies were shown to be caused by innocuous metal items, such as wire and pipes. A single piece of ordnance-related scrap was found at Anomaly 1, shown as square 1 on Figure 2 of the Corps' Post Removal Action Confirmation Sampling Report (2002) (the "Confirmation Sampling Report"). The scrap did not contain explosives, nor were any other ordnance or explosives found.

The Confirmation Sampling Report concludes that "based on the results of the confirmation sampling investigation, no further action is recommended for the site [the Impregnation Kit Area]." Furthermore, the report states that the Corps, EPA and VDEQ have agreed to redefine the boundaries of the Impregnation Kit Area to reflect the actual size of the removal area. The removal occurred within a 270 foot diameter circle, with an area of about 57,255 square feet. EPA has no data at this time that show releases of hazardous substances, pollutants or contaminants in the rest of the approximately 300,000 square foot rectangle described in EPA's 1999 HRS Documentation Record. EPA bases its proposal to delete the soil in the Impregnation Kit Area (all 300,000 square feet) on the results of the Corps' Post Removal Action Confirmation Sampling Report and the other documents in the Deletion Docket. Based on these documents, EPA, with the concurrence of the Commonwealth of Virginia, has determined that the Corps has implemented all appropriate response actions for the soil in the Impregnation Kit Area and no further response action is appropriate for the soil in this area.

Ground water beneath the Impregnation Kit Area has not been fully characterized and is not proposed for deletion from the NPL. Although some sampling and evaluation has been completed, more study is needed to better understand whether the ground water is contaminated and, if so, to what extent. Hazardous substances, including explosives, have been detected in ground water at other locations within Nansemond. It has not been clearly demonstrated that hazardous substances, pollutants or contaminants have been, or continue to be, released into the ground water beneath the Impregnation Kit Area at levels of

concern to human health or the environment. Data gathered so far do not appear to indicate unacceptable human health threats from ground water beneath the Impregnation Kit Area, except perhaps if used for drinking water. Accordingly, the present owner of the property has agreed to prohibit drinking of ground water beneath the Impregnation Kit Area through a restrictive covenant, or similar legal device, in a deed. In addition, a City of Suffolk ordinance, section 90-126, requires all new premises, buildings or dwellings abutting a city water main to connect to the water main. This means that, under current law, any new buildings on the Impregnation Kit Area would connect to the city water main, reducing the likelihood that people would choose to drill wells and use ground water beneath the Impregnation Kit Area. The EPA and Corps plan future investigations to determine whether the ground water beneath the Impregnation Kit Area, and other areas within Nansemond, poses a risk to human health or the environment.

#### Community Involvement

The Corps and EPA have had a comprehensive public involvement program for several years at Nansemond. The Corps prepared its first community relations plan for Nansemond in 1996 and in 1997 organized a Restoration Advisory Board (RAB) to solicit the views of local citizens and other interested parties on the environmental restoration at Nansemond. RAB members include representatives of the Corps, EPA, VDEQ and community members. RAB members meet every second month to review and comment on technical documents and plans relating to the ongoing environmental restoration activities at Nansemond. Meetings are open to all members of the public. The 1998 removal, the post confirmation sampling and plans to partially delete the Impregnation Kit Area have been discussed at RAB meetings.

The Corps and EPA have also established document repositories, described above, to make available to the public information about the investigation and cleanup at Nansemond.

#### Current Status

Removal of impregnation kits and associated contaminated soil in the Impregnation Kit Area has been successfully completed. No further response action is planned or scheduled for the soil in this area. Ground water, however, may be the subject of future response actions under CERCLA. In the

future, five-year reviews may be required at Nansemond if other remedies are selected that leave waste on site above levels that allow for unlimited use and unrestricted exposure.

While EPA does not believe that any future response actions will be needed for the soil in the Impregnation Kit Area, if future conditions warrant such action, the proposed deletion area remains eligible for future response actions. Furthermore, this partial deletion does not alter the status of any other areas at Nansemond that are not proposed for deletion and remain on the NPL, including, but not limited to, the ground water beneath the Impregnation Kit Area.

EPA, together with Corps and with concurrence from the Commonwealth of Virginia, has determined that all appropriate CERCLA response actions have been completed for the soil in the Impregnation Kit Area and protection of human health and the environment has been achieved in these areas. Therefore, EPA makes this proposal to delete the soil in the Impregnation Kit Area of Nansemond site from the NPL.

Dated: January 9, 2003.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03-1144 Filed 1-17-03; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[ET Docket No. 02-380; FCC 02-328]

#### Spectrum for Unlicensed Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; notice of inquiry.

**SUMMARY:** This document requests comments from the public on the possibility of permitting unlicensed devices to operate in additional frequency bands. Specifically, the Commission seeks comments on the feasibility of allowing unlicensed devices to operate in TV broadcast spectrum at locations and times when spectrum is not being used, and on the technical requirements that would be necessary to ensure that such devices do not cause interference to authorized services operating within the TV broadcast bands. The Commission also seeks comment on the feasibility of permitting unlicensed devices to operate in other bands, such as the 3650-3700 MHz band at power levels

significantly higher than the maximum permitted for unlicensed devices in other frequency bands, with only the minimal technical requirements necessary to avoid interference to licensed and incumbent services. The Commission believes that these actions could have significant benefits to the economy, businesses and consumers by allowing the development of new and innovative types of unlicensed devices.

**DATES:** Written comments are due April 7, 2003, and reply comments are due May 6, 2003.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418-7506, TTY (202) 418-2989, e-mail: [hvantuyl@fcc.gov](mailto:hvantuyl@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Inquiry*, ET Docket 02-380, FCC 02-328, adopted December 11, 2002, and released December 20, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 7, 2003, and reply comments on or before May 6, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the

applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

#### Summary of Notice of Inquiry

1. The Commission initiated this *Notice of Inquiry* ("NOI") to obtain comments from the public on the possibility of permitting unlicensed devices to operate in additional frequency bands. Specifically, we seek comments on the feasibility of allowing unlicensed devices to operate in TV broadcast spectrum at locations and times when spectrum is not being used, and on the technical requirements that would be necessary to ensure that such devices do not cause interference to authorized services operating within the TV broadcast bands. The Commission also seeks comment on the feasibility of permitting unlicensed devices to operate in other bands, such as the 3650-3700 MHz band at power levels significantly higher than the maximum permitted for unlicensed devices in other frequency bands, with only the