

contaminants, physical hazards, and biological agents. The Standard contains requirements for program administration; a written respirator-protection program with worksite-specific procedures; respirator selection; worker training; fit testing; medical evaluation; respirator use; respirator cleaning, maintenance, and repair; and other provisions.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218-0099. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 14, 2011 (76 FR 13668).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205-0268. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title of Collection: Respiratory Protection Standard.

OMB Control Number: 1218-0099.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 618,804.

Total Estimated Number of Responses: 21,486,375.

Total Estimated Annual Burden Hours: 6,801,711.

Total Estimated Annual Other Costs Burden: \$185,578,935.

Dated: July 19, 2011.

Michel Smyth,

Departmental Clearance Officer.

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## MERIT SYSTEMS PROTECTION BOARD

### Notice of Opportunity To File Amicus Briefs

**AGENCY:** Merit Systems Protection Board (MSPB or Board).

**ACTION:** Notice.

**SUMMARY:** The Board announces the opportunity to file amicus briefs in the matters of James C. Latham v. U.S. Postal Service, MSPB Docket Number DA-0353-10-0408-I-1, Ruby N. Turner v. U.S. Postal Service, MSPB Docket Number SF-0353-10-0329-I-1, Arleather Reaves v. U.S. Postal Service, MSPB Docket Number CH-0353-10-0823-I-1, Cynthia E. Lundy v. U.S. Postal Service, MSPB Docket Number AT-0353-11-0369-I-1, and Marcella Albright v. U.S. Postal Service, MSPB Docket Number DC-0752-11-0196-I-1.

The Office of Personnel Management's regulation at 5 CFR 353.301(d) requires the agency to "make every effort" to restore a partially recovered employee to limited duty within the local commuting area. The regulation explains that "[a]t a minimum, this would mean treating these employees substantially the same as other [disabled] individuals under the Rehabilitation Act of 1973." The Board has interpreted this regulation as requiring agencies to search within the local commuting area for vacant positions to which an agency can restore a partially recovered employee and to consider the employee for any such vacancies. *Sanchez v. U.S. Postal Service*, 114 M.S.P.R. 345, ¶ 12 (2010)

(citing *Sapp v. U.S. Postal Service*, 73 M.S.P.R. 189, 193-94 (1997)).

Conversely, the Board has found that this regulation does not require an agency to assign a partially recovered employee limited duties that do not comprise the essential functions of a complete and separate position. *Brunton v. U.S. Postal Service*, 114 M.S.P.R. 365, ¶ 14 (2010) (citing *Taber v. Department of the Air Force*, 112 M.S.P.R. 124, ¶ 14 (2009)).

However, it appears that the U.S. Postal Service may have established an agency-specific rule providing partially recovered employees with greater restoration rights than the "minimum" rights described in 5 CFR 353.301(d). See generally *Drumheller v. Department of the Army*, 49 F.3d 1566, 1574 (Fed. Cir. 1995) (agencies are required to follow their own regulations). Specifically, the U.S. Postal Service's Employee and Labor Relations Manual (ELM) § 546.142(a) requires the agency to "make every effort toward assigning [a partially recovered current employee] to limited duty consistent with the employee's medically defined work limitation tolerance." One of the appellants has submitted evidence to show that U.S. Postal Service Handbook EL-505, Injury Compensation §§ 7.1-7.2 provides that limited duty assignments "are designed to accommodate injured employees who are temporarily unable to perform their regular functions" and consist of whatever available tasks the agency can identify for partially recovered individuals to perform consistent with their medical restrictions. *Latham v. U.S. Postal Service*, MSPB Docket No. DA-0353-10-0408-I-1, Initial Appeal File, Tab 21, Subtab 7. It therefore appears that the agency may have committed to providing medically suitable work to partially recovered employees regardless of whether that work comprises the essential functions of a complete and separate position. Indeed, the Board is aware of one arbitration decision explaining that, as a product of collective bargaining, the agency revised the ELM in 1979 to afford partially recovered employees the right to restoration to "limited duty" rather than to "established jobs." *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers*, Case No. E06N-4E-C 09370199, 16 (2010) (Eisenmenger, Arb.). The Board is also aware of a large number of other recent cases challenging the discontinuation of limited duty assignments under the National Reassessment Process in which the arbitrators ruled in favor of the grievants

on the basis that the agency's actions violated the ELM. *E.g., In re Arbitration between U.S. Postal Service and National Association of Letter Carriers*, Case No. G06N-4G-C 10205542 (2011) (Sherman, Arb.); *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers*, Case No. E06N-4E-C 09419348 (2010) (Duffy, Arb.); *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers*, Case No. F06N-4F-C 09221797 (2010) (Monat, Arb.); *In re Arbitration between U.S. Postal Service and National Association of Letter Carriers*, Case No. B01N-4B-C 06189348 (2010) (LaLonde, Arb.).

The appellants in the above-captioned appeals have all raised similar arguments before the Board pertaining to alleged violations of their restoration rights under the ELM. The Board, however, has not yet addressed the implications of ELM § 546.142(a) on restoration appeals of partially recovered U.S. Postal Service employees under 5 CFR 353.304(c).

The above-captioned appeals thus present the following legal issues: (1) May a denial of restoration be "arbitrary and capricious" within the meaning 5 CFR 353.304(c) solely for being in violation of the ELM, *i.e.*, may the Board have jurisdiction over a restoration appeal under that section merely on the basis that the denial of restoration violated the agency's own internal rules; and (2) what is the extent of the agency's restoration obligation under the ELM, *i.e.*, under what circumstances does the ELM require the agency to offer a given task to a given partially recovered employee as limited duty work?

Interested parties may submit amicus briefs or other comments on these issues no later than August 24, 2011. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 30 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½ by 11 inch paper with one inch margins on all four sides.

**DATES:** All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before August 24, 2011.

**ADDRESSES:** All briefs shall be captioned "*James C. Latham, et al. v. U.S. Postal Service*" and entitled "Amicus Brief." Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

**FOR FURTHER INFORMATION CONTACT:** Matthew Shannon, Office of the Clerk of

the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200; [mspb@mspb.gov](mailto:mspb@mspb.gov).

**William D. Spencer,**  
Clerk of the Board.

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 040-06394; NRC-2008-0523]

### Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License; Department of the Army

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

#### FOR FURTHER INFORMATION CONTACT:

Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Telephone: 610-337-5366; fax number: 610-337-5269; e-mail: [Dennis.Lawyer@nrc.gov](mailto:Dennis.Lawyer@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SMB-141. This license is held by the Department of the Army, U.S. Army Research, Development and Engineering Command (ARDEC), Army Research Laboratory (ARL) (the Licensee), for its U.S. Army Research Laboratory facility (the Facility) located at the Aberdeen Proving Ground (APG), Maryland. Issuance of the amendment would authorize release of a portion of the Facility, specifically the Building 1103A area, for unrestricted use. The Licensee requested this action in a letter dated March 31, 2010. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

## II. Environmental Assessment

### Identification of Proposed Action

The proposed action would approve the Licensee's March 31, 2010, license amendment request, resulting in release of the Building 1103A area for unrestricted use. License No. SMB-141 was issued on April 12, 1961, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to use uranium and thorium for purposes of conducting research and development activities; fabrication, modification, and testing of components, parts, and/or devices; and munitions testing.

The Building 1103A area is a former radioactive material processing and storage facility on Spesutie Island at APG. Historical activities at the Building 1103A area involved the unloading of depleted uranium contaminated targets in a central asphalt area; storage and staging of the targets in one of three vaults; cutting and machining of the targets; and storage and reloading of the resulting steel pieces in preparation for decontamination, disposal, or reuse. The Building 1103A area occupies an area of about 36,600 square feet, of which 7,000 square feet is comprised of buildings.

In August 2009, the Licensee ceased licensed activities at the Building 1103A area and initiated a survey and decontamination of the Building 1103A area. Based on the Licensee's historical knowledge of the site and the conditions of the Building 1103A area, the Licensee determined that a decommissioning plan was required. The decommissioning plan was submitted and was approved in License Amendment #30, issued on November 20, 2008, (Agencywide Document Access and Management System [ADAMS] Accession No. ML083260281). In accordance with their NRC-approved decommissioning plan (ADAMS Accession Numbers ML081550541, ML081550549, ML081550553, ML081550557, and ML081550561), the Licensee performed cleanup activities. The Licensee then conducted surveys of the Building 1103A Area and provided information to the NRC to demonstrate that the Building 1103A Area meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

### Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Building 1103A area, and seeks the unrestricted use of the Building 1103A area.